

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

TUESDAY, SEPTEMBER 18, 2018  
6:00 P.M.

Council Chambers, City Hall  
212 S. Vanderhurst Avenue, King City, CA

### 1. CALL TO ORDER

### 2. FLAG SALUTE

### 3. ROLL CALL:

Planning Commission Members: Oscar Avalos, Ralph Lee, David Mendez,  
Domingo Uribe and Chairperson David Nuck

### 4. PUBLIC COMMENTS

*Any person may comment on any item not on the agenda. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD. Action may not be taken on the topic, unless deemed an urgency matter by a majority vote of the Planning Commission. Topics not considered an urgency matter might be referred to City staff and placed on a future agenda, by a majority vote of the Planning Commission.*

### 5. PRESENTATIONS

None

### 6. CONSENT AGENDA

*All matters listed under the Consent Agenda are considered routine and may be approved by one action of the Planning Commission unless any member of the Planning Commission wishes to remove an item for separate consideration.*

- A. Meeting Minutes of August 21, 2018 Planning Commission Meeting  
Recommendation: Approve and file.

### 7. PUBLIC HEARINGS

- A. Project: Amendment of the City's Zoning Ordinance Pertaining to Commercial Cannabis Activities Including Odor Control Requirements and Limitations and Associated CEQA Determination.
- Applicant: City of King
- Location: The regulatory ordinance would apply to all M-1 and M-2 zone districts along with the East Ranch Business Park Specific Plan (ERBP-SP). As uses authorized in M-1 and M-2 zoned districts are also currently allowable in the M-3 zoned district, the ordinance would also have a similar effect for uses in the M-3 zoned district. The area affected (ERBP SP and M- Districts) are located in the northeast portion of the City, near the airport and bordered by Metz Road, Bitterwater Road, and the eastern boundary of the City.

Consideration: A Resolution Recommending to the City Council the Approval of an Ordinance Amending Chapter 17.03 of Title 17 of the King City Municipal Code Pertaining to Commercial Cannabis Activity Odor Control and Related CEQA Determination.

Recommendation: Planning Commission adopt a Resolution recommending to City Council approval of an Ordinance amending Chapter 17.03 of Title 17 of the King city Municipal Code pertaining to commercial cannabis activity odor control and the related CEQA determination.

Environmental Determination: Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061 (b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because the only effect of the ordinance will be to reduce detectable odors. Therefore, this project is not subject to CEQA.

**8. NON-PUBLIC HEARINGS**

None

**9. PLANNING COMMISSIONER REPORTS**

**10. DIRECTOR’S REPORT**

**11. WRITTEN CORRESPONDENCE**

**12. ADJOURNMENT**

**UPCOMING REGULAR MEETINGS**

**SEPTEMBER**

September 4 <sup>th</sup>	6:00 p.m.	Planning Commission (canceled)
September 10 <sup>th</sup>	6:00p.m.	Airport Advisory Committee (canceled)
September 11 <sup>th</sup>	6:00p.m.	City Council
September 17 <sup>th</sup>	6:00 p.m.	Recreation Commission
September 18 <sup>th</sup>	6:00p.m.	Planning Commission
September 25 <sup>th</sup>	6:00 p.m.	City Council

**OCTOBER**

October 2 <sup>nd</sup>	6:00 p.m.	Planning Commission
October 8 <sup>th</sup>	6:00 p.m.	Airport Advisory Committee
October 9 <sup>th</sup>	6:00 p.m.	City Council
October 15 <sup>th</sup>	6:00 p.m.	Recreation Commission
October 16 <sup>th</sup>	6:00 p.m.	Planning Commission
October 23 <sup>rd</sup>	6:00 p.m.	City Council

**ADT:** Average daily trips made by vehicles or persons in a 24-hour period

**ALLUC:** Airport Land Use Commission

**AMBAG:** The Association of Monterey Bay Area Governments. The AMBAG region includes Monterey, San Benito and Santa Cruz Counties, and serves as both a federally designated Metropolitan Planning Organization and Council of Government. AMBAG manages the region's transportation demand model and prepares regional housing, population and employment forecast that are utilized in a variety of regional plans.

**APCD:** Air Pollution Control District

**BMP:** Best Management Practice, Bike Master Plan

**CAP:** Climate Action Plan

**CC&Rs:** Covenants, Conditions, and Restrictions (private agreements among property owners; the City has no authority to enforce these)

**CDBG:** Community Development Block Grant (a federal grant program designed to benefit low and moderate income persons)

**CEQA:** California Environmental Quality Act

**CFD:** Community Facilities District

**COG:** A council of government, or regional council, is a public organization encompassing a multi-jurisdictional regional community. It serves the local governments by dealing with issues that cross political boundaries.

**CUP:** Conditional Use Permit

**EIR:** Environmental Impact Report

**Ex-Parte:** Communication between Planning Commissioners and applicants outside of a public meeting

**FEMA:** Federal Emergency Management Agency

**GHG:** Greenhouse gas

**HOME:** Home Investment Partnership Act (a federal program to assist housing for low and moderate income households)

**HCP:** Habitat Conservation Plan

**HCD:** State Department of Housing & Community Development

**HUD:** U.S. Department of Housing and Urban Development

**LAFCO:** Local Agency Formation Commission

**LID:** Low Impact Development (measures to reduce rainwater runoff impacts)

**LLA:** Landscaping and Lighting District

**LOS:** Level of Service (a measurement of traffic efficiency used by Caltrans)

**MMTC:** A multimodal transit center includes a combination of alternative modes of transportation so people do not have to only rely on vehicles.

**MOU:** Memorandum of Understanding

**MND:** Mitigated Negative Declaration

**MPO:** A metropolitan planning organization is a federally mandated and federally funded transportation policy-making organization, such as AMBAG, that is made up of representatives from local government to help implement transportation projects and projects.

**Neg Dec:** Negative Declaration (a CEQA statement that a project will not have a significant effect on the environment)

**NEPA:** National Environmental Policy Act

**SOI:** Sphere of Influence.

**TAMC:** The Transportation Agency for Monterey County develops and maintains a multimodal transportation system for Monterey County. TAMC consists of local officials from each Monterey city (12 cities) and five (5) county supervisorial districts, and ex-officio members from six (6) public agencies.

**TOT:** Transient Occupancy Tax

**Variance:** A form of relief from zoning development regulations based on physical constraints of a property that prevents development of the same type of buildings allowed on other properties within the same zone and in the same neighborhood

**VMT:** Vehicle Miles Traveled

**Planning Commission Minutes**

**August 21, 2018**

**1. Call to Order**

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Chair Nuck called the regular meeting of the Planning Commission of the City of King to order at 6:04 p.m.

**2. Pledge of Allegiance**

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Chair Nuck led the Commission and audience in the Pledge of Allegiance.

**3. Roll Call**

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Chairperson David Nuck X Oscar Avalos A  
Ralph Lee A David Mendez X Domingo Uribe X

Commissioner Mendez made a motion to excuse Commissioner Lee and Commissioner Avalos. Seconded by Commissioners Uribe. Motion carried 3-0.

**Staff present:** Community Development, Director Doreen Liberto; Principal Planner, Scott Bruce; Admin. Asst./Deputy City Clerk, Erica Sonne.

**4. Public Comments**

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**5. Presentations**

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**6. Consent Calendar**

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All matters listed on the Consent Calendar are considered routine and may be approved by one action of the Planning Commission, unless any member of the Planning Commission wishes to remove an item for separate consideration.

**A. Approval of Minutes:** August 7, 2018

**Action:** Motion made by Commissioner Uribe to approve minutes of August 7, 2018. Seconded by Commissioner Mendez. Motion carried 3-0.

**7. PUBLIC HEARINGS**

A.	Project:	CUP 2017-003
	Applicant:	Frank Gallagher
	Location:	100 Don Bates Way
	Consideration:	CUP Amendment 2017-003: Commercial Cannabis – Cultivation (Type 2A Including Processing), Nursery (Type 4), Manufacturing (Type 7), Non-Storefront Delivery (Type 9), Distribution (Type 11); Micro Business (Type 12). 100 Don Bates Way, City of King. APN 026-521- 010
	Recommendation:	Planning Commission 1) review Conditional Use Permit Application, 2) receive public comment; and 3) adopt the attached Resolution 2018-236 approving Conditional Use Permit 2017-003

Environmental  
Determination:

The project qualifies as a Class 1 Exemption per CEQA Guidelines §15301 (Existing Facilities), with all renovation occurring within the existing structure and, being surrounded by urban uses and not having significant impacts to traffic, noise, air quality or water quality.

Principal Planner Scott Bruce introduced this item with a PowerPoint.

PERMITS for CUP

- 5 Cultivation Permits
- 2 Nursery, 2 Manufacturing, 1 Distribution,  
1 Non-Store Front Dispensary

EMPLOYEES (Per Shift)

- 38 Production
- 7 Administrative
- 3-4 Security

Chair Nuck opened the public hearing,

Frank Gallagher thanked the Planning Commission and the City for their efforts.

Chair Nuck closed the public hearing.

Commissioner Uribe made a motion adopt the attached Resolution 2018-236 approving Conditional Use Permit 2017-003 seconded by Commissioner Mendez. Approved 3-0.

B. Project:	CUP 2016-010(a)18
Applicant:	The Tribe (Corey Barnette, Malik Burnett)
Location:	150 Don Bates Way
Consideration:	Cup 2016-010(A)18, Medical Cannabis Manufacturing (Ca Type 7), Distribution (Ca Type 11). Change in Height of Structures and Wall Design Revisions. 150 Don Bates Way. APN 026-521-011
Recommendation:	Planning Commission 1) review Conditional Use Permit Application, 2) receive public comment; and 3) adopt the attached Resolution 2018-237 approving Conditional Use Permit 2016-010(a)18.
Environmental Determination:	King City previously prepared and certified (September 2016) a Mitigated Negative Declaration (MND) for the amendment of the City's Zoning Ordinance and the amendment of the East Ranch Business Park Specific Plan (ERBPSP)s (Ordinances 2016-728, 2016-729 and 2016-730) to allow new land uses in the Manufacturing Districts (M-1, M-2, M-3) and in the ERBP Specific Plan.

In September of 2017 King City conducted an initial study of the project and has determined the project is fully within the scope of the prior analysis by the MND. In October 2017 the Planning Commission adopted of a Finding of Consistency with the previous MND.

Principal Planner Scott Bruce introduced this item.

Chair Nuck opened the public hearing,

Mike Nino is concerned about the odor down the First St. corridor. He also wanted to point out is the parking spaces are problem in other cities and he wanted to say that it needs to be addressed.

Commissioner Uribe is concerned as well about parking. Principal Planner Bruce stated that the project meets that municipal code of 2 parking spaces per every 3 employees.

Commissioner Uribe would like to have extra parking or have a condition that they need to come back if it is not working.

Principal Planner stated that the odor will be on a complaint driven basis.

Principal Planner stated that the parking can be held to the number of employees. If they go over the employees they said they have it can be revisited.

Chair Nuck closed the public hearing.

Commissioner Mendez made a motion to adopt the attached Resolution 2018-237 approving Conditional Use Permit 2016-010(a)18 seconded by Commissioner Uribe. Approved 3-0.

**8. NON- PUBLIC HEARINGS –**

- A. Project: Mills Ranch Master Landscape & Irrigation Plan
- Applicant: Nino Home
- Location: Mills Ranch Specific Plan Development
- Consideration: Landscape and Irrigation Plans for the street parkway landscaping lot front yard and rear yard landscaping and irrigation systems.
- Recommendation: The Planning Commission adopt Resolution No. 2018-238 approving the landscaping and Irrigation Plans
- Environmental Determination: The City Council certified the Mills Ranch Specific Plan Final EIR and EIR Addendum on March 28, 2005. The landscaping and Irrigation Plans are consistent with the plans reviewed under the EIR and will not have a significant impact on the environment.

Community Development Director Liberto introduced this item.

Mike Nino had a presentation for the Planning Commission. They are making changes to accommodate the drought resistant plan. They will not be using lawn. He also had a street tree list.

His PowerPoint included:

Landscape Master Plan Addresses:

- Incorporating the updated Landscape Standards adopted by King City this past May
- Landscaping for each type of Home in Mills Ranch: Lane, Cottage, Village & Orchard
- Landscaping for Common areas including the Alleys and Curb strips
- Reduced Irrigation

Mills Ranch – Street Trees Used

- Fraxinus oxy “Raywood”      Redwood Ash
- Pistchia Chinensis              Chinese Pistache
- Pyrus Call “Bradford”        Ornamental Pear
- Zelkova Serr “Village Green”    Sawleaf Zelkova

Trees will be adjusted to conform with the Updated Master Tree List

Commissioner Uribe made a motion adopt Resolution No. 2018-238 approving the Landscaping and Irrigation Plans seconded by Commissioner Mendez. Approved 3-0.

**9. Regular Business-** None

**10. Planning Commission Report** – It was brought to staff’s attention by Commissioner Uribe that the Creekbridge soccer field is in bad shape. Community Development Director stated that staff just drove by today and is aware.

**11. Director Reports-** Cancel September 4<sup>th</sup> as we have no items.

**12. Written Correspondence–** None

**13. Adjournment**

There being no further business, the Planning Commission meeting was adjourned at 7:29 p.m.

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David Nuck  
Planning Commission Chairperson  
City of King

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Erica Sonne  
Planning Commission Secretary  
City of King



Item No. 7(A)

**REPORT TO THE PLANNING COMMISSION**

**DATE: SEPTEMBER 18, 2018**

**TO: PLANNING COMMISSION**

**FROM: STEVEN ADAMS, CITY MANAGER**

**DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR**

**RE: CONSIDERATION OF A RESOLUTION RECOMMENDING TO THE CITY COUNCIL THE APPROVAL OF AN ORDINANCE AMENDING CHAPTER 17.03 OF TITLE 17 OF THE KING CITY MUNICIPAL CODE PERTAINING TO COMMERCIAL CANNABIS ACTIVITY ODOR CONTROL AND RELATED CEQA DETERMINATION**

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**RECOMMENDATION:**

It is recommended the Planning Commission adopt a Resolution recommending to the City Council approval of an Ordinance amending Chapter 17.03 of Title 17 of the King City Municipal Code pertaining to commercial cannabis activity odor control and the related CEQA determination.

**BACKGROUND:**

An urgent issue that has come to staff's attention is odor problems that have been experienced by other jurisdictions with regard to cannabis cultivation operations, particularly those housed in greenhouse structures. The City's current regulations prohibit any offsite odor from a cannabis business. This presents two challenges. First, it is unlikely that businesses will be able to achieve this standard. Secondly, it will be difficult to enforce because the determination is subjective and individuals have different sensitivities with regard to odor issues.

Staff began researching solutions by contacting applicants who planned to use greenhouses in their cultivation activities, the City of Greenfield Community Development Director, the manufacturer of the fogging system to be used in

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greenhouse operations for odor control, and the manufacturer of greenhouses. Staff requested specific examples of operations where fogging was used to successfully minimize odor. To date, east coast examples have been provided. California examples are anticipated in the near future, but staff is concerned that no readily available examples have been identified where this issue has been successfully addressed.

Staff also contacted a third party verifier/expert in odor identification and management (St. Croix Sensory, Charles McGill). Mr. McGill has been helpful in identifying the type of smell created by cannabis, the history of smell detection and quantification, and possible methods to address it. There is a technique available that accurately quantifies the amount of smell in the air. The device is generically named a "scentometer". More specifically, the device that is manufactured by this firm is named the "Nasal Ranger".

At the July 10, 2018 meeting, staff presented the City Council recommendations regarding new proposed regulations involving odor restrictions. At that time, the City Council directed staff to proceed to draft an Ordinance to implement the recommendations.

**DISCUSSION:**

The general approach that staff is advocating is to establish a specific measurable odor standard in the City's cannabis regulations and then purchase or contract for the measurement device to ensure operations are in compliance. If a complaint is received, odor at the building will be measured. If a violation exists, the business would be provided a reasonable time period to comply. If compliance is not achieved within that time period, the operational permit would either be revoked or would be deemed ineligible for renewal.

In addition, it is recommended to prohibit use of greenhouses within 750 feet of residentially zoned areas. This will help prevent any odor that is created from having a significant negative impact on the community. Staff researched existing proposed projects and this restriction will not impact any current plans for greenhouse operations.

The odor level threshold recommended is 4 dilutions to threshold (D/T). Based on staff's research, this appears to be both a strict level, but achievable. The amount of odor is less the lower the number is. Some cities in Colorado have used allowable levels of 7. Since staff's goal is to pursue an odor level that is not

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readily detectible in the community, a stricter odor measure is recommended. When staff communicated with the fogging system manufacturer, they indicated that their systems were capable of achieving a level 4.

It is also recommended that if problems and complaints occur, the City may revise the Ordinance to require a lower level at that time. All businesses would then be provided a specified time period to modify their equipment as necessary to comply with the new standard.

One issue of concern that has been raised is how to determine the specific business causing a violation if multiple businesses are located in the same structure. As a result, the Ordinance is drafted so the City can revoke the permit of a business if they are determined responsible or instead take enforcement action against the building owner if the specific business responsible cannot be determined.

**ENVIRONMENTAL REVIEW:**

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061(b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because the only effect of the Ordinance will be to reduce detectible odors. Therefore, this project is not subject to CEQA.

**ALTERNATIVES:**

The following alternatives are provided for Planning Commission consideration:

1. Adopt the Resolution;
2. Request modifications to the Ordinance and then adopt the Resolution;
3. Continue the item to request additional changes;
4. Do not recommend any changes to the City's odor regulation; or
5. Provide other direction to staff.

Submitted by:

  
Doreen Liberto, Department Director

Approved by:

  
Steven Adams, City Manager

**RESOLUTION NO. 2018-239****A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF KING, COUNTY OF MONTEREY, STATE OF CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL THE APPROVAL OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING AMENDING CHAPTER 17.03 OF TITLE 17 OF THE KING CITY MUNICIPAL CODE PERTAINING TO COMMERCIAL CANNABIS ACTIVITY ODOR CONTROL**

**WHEREAS**, the City of King (“the City”) has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the City, California Constitution Article XI, section 7; and

**WHEREAS**, in 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances; and

**WHEREAS**, in 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and provide additional statutory guidance regarding medical cannabis use. These statutes are codified at Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations; and

**WHEREAS**, on October 9, 2015, almost 20 years after passage of the Compassionate Use Act, the Governor signed the Medical Marijuana Regulation and Safety Act (“Act”), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial cannabis operations; and

**WHEREAS**, on June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, and making other technical changes to the Act. SB 83 7 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis; and

**WHEREAS**, in 2016, the City adopted Title 17, Chapter 17.03 et seq., of the King City Municipal Code pertaining to Medical Cannabis Activity. The Medical Cannabis Ordinance places complete bans and regulations on medical cannabis activity in the City based upon various health, safety and welfare and land use findings relating to cannabis cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

**WHEREAS**, on August 1, 2017, at a lawfully noticed hearing, the Planning Commission for the City of King heard and considered the issue of increasing the maximum number of manufacturing permits the City will approve. The Planning Commission, upon hearing and considering the issue of increasing the maximum number of manufacturing permits, recommends

that the City Council of the City of King increase the maximum number of manufacturing permits the City will approve from six (6) to ten (10).

**WHEREAS**, in November of 2016 the Adult Use of Marijuana Act (“AUMA”) was approved by a majority of California voters. The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products. Adults, age 21 and older, will be allowed to possess cannabis and grow certain amounts at home for personal use; and

**WHEREAS**, the AUMA did not provide for a specific effective date, thus the provisions of the AUMA regarding personal use, possession, and cultivation of cannabis became effective the day after the November 8, 2016; and

**WHEREAS**, the AUMA’s proposed Health & Safety Code section 11362.1(a)(3), will make it lawful under state and local law for any person twenty-one (21) years of age or older to “Possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants”; and

**WHEREAS**, the City wishes to enact regulations governing commercial cultivation of cannabis at this time; and

**WHEREAS**, the AUMA’s proposed Health & Safety Code section 11362.2(b) explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis so long as the City does not prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

**WHEREAS**, several California cities have reported negative impacts of cannabis cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of cannabis), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests); and

**WHEREAS**, cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

**WHEREAS**, due to the value of cannabis plants and their strong smell (which alerts others to their locations), cannabis cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety; and

**WHEREAS**, unregulated cannabis cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance, in that cannabis cultivation has been shown to involve avoidance of environmental laws and regulations, and has resulted in the pollution of waters and navigable waterways in the State of California; and

**WHEREAS**, the indoor cultivation of cannabis has potential adverse effects to the structural integrity of the buildings in which cannabis is cultivated, 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 buildings, its occupants, and neighboring buildings and residents; and

**WHEREAS**, unregulated indoor cultivation of cannabis can be harmful to the public health, safety and welfare, given electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

**WHEREAS**, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of cannabis 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 and/or crime; and

**WHEREAS**, MMRSA and AUMA mandated comprehensive state licensing and regulatory framework for cultivation, manufacturing, distribution, transporting, testing and dispensing cannabis and cannabis products; however, implementing regulations have yet to be written and state licenses may not be available until 2018; and

**WHEREAS**, there are numerous well publicized studies and reports, as well as numerous documented incident in Monterey County and throughout the State, which show that unregulated cannabis activities have a significant adverse effect on the community; and

**WHEREAS**, the City finds that the absence of a formal regulatory framework the adverse impacts frequently associated with commercial cannabis activities will occur, resulting in an unregulated and potentially significant negative impact upon the environment and upon public health, safety, and welfare of the community; and

**WHEREAS**, outdoor cannabis cultivation and unregulated indoor cannabis cultivation are likely to generate these negative effects on the public health, safety, and welfare in the City, based on the experiences of other cities; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City desires to explicitly prohibit the outdoor cultivation of commercial cannabis for both recreational and medical use; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City also desires to enact reasonable regulations for the indoor cultivation, manufacturing, testing, distribution, or consumption of commercial recreational and medical cannabis; and

**WHEREAS**, absent clear regulation, cannabis cultivation in the City poses a potential threat to the public peace, health, and safety, and, unless the City takes action to regulate it, the secondary impacts described above are likely to occur very soon after the passage of the AUMA; and

**WHEREAS**, the City has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the City by regulating the commercial cultivation of recreational and medical cannabis; this Odor related Ordinance is enacted to protect that interest ; and

**WHEREAS**, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, manufacturing, testing, distribution, or consumption of cannabis which is illegal under state or federal law; and

**WHEREAS**, it is the intent of the City to regulation commercial cannabis activities, both recreational and medical, within the boundaries of the City; and

**WHEREAS**, these uses are consistent with underlying zoning and consistent with the General Plan; and

**WHEREAS**, the Planning Commission desires to recommend approval of the ordinances and associated findings under the California Environmental Quality Act to the City Council.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Commission of the City of King as follows:

**Section 1:** The Planning Commission has reviewed the project and recommends that the City Council adopt a finding that the attached odor related ordinance will not create potentially significant environmental impacts pursuant to the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) It is also exempt because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by prohibiting environmentally destructive components of unregulated cannabis cultivation. (CEQA Guidelines §§ 15307 and 15308.) Finally, no exceptions to the Categorical Exemptions are applicable under CEQA Guidelines section 15300.2.

**Section 2.** After reviewing the proposed zoning amendments and considering all oral and written information regarding the text amendments, that the Planning Commission does recommend the City Council approve the proposed amendments to Chapter 17.03 of Title 17; Chapter 17.30 of Title 17; and Chapter 17.31 of Title 17 , (*collectively Attachment 1*); and the proposed amendments to the ERBP-SP (*Attachment 2*).

**Section 3.** The Planning Commission Chairman of the City of King is hereby authorized to affix his signature to this Resolution signifying its adoption by the Planning Commission. The Community Development Director is directed to forward this Resolution to the City Council with the recommendations of the Planning Commission.

PASSED, APPROVED, AND ADOPTED by Planning Commission on this the 18<sup>th</sup> day of September 2018.

\_\_\_\_\_  
David Nuck, Chairperson

ATTEST:

\_\_\_\_\_  
Erica Sonne  
Planning Commission Secretary

I, Erica Sonne, Planning Secretary to the City Planning Commission, do hereby certify that Resolution No. 2018-239 was duly and regularly passed and adopted by the Planning Commission on the 18<sup>th</sup> day of September, 2018, by the following roll call vote as the same appears on file and of record in Office of the Community Development Department.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Erica Sonne  
Planning Commission Secretary  
City of King

**ORDINANCE NO. \_\_\_\_****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING AMENDING CHAPTER 17.03 OF TITLE 17 OF THE KING CITY MUNICIPAL CODE PERTAINING TO COMMERCIAL CANNABIS ACTIVITY ODOR CONTROL**

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**WHEREAS**, in 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and provide additional statutory guidance regarding medical cannabis use. These statutes are codified at Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations; and

**WHEREAS**, on October 9, 2015, almost 20 years after passage of the Compassionate Use Act, the Governor signed the Medical Marijuana Regulation and Safety Act (“Act”), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial cannabis operations; and

**WHEREAS**, on June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, and making other technical changes to the Act. SB 83 7 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis; and

**WHEREAS**, in 2016, the City adopted Title 17, Chapter 17.03 et seq., of the King City Municipal Code pertaining to Medical Cannabis Activity. The Medical Cannabis Ordinance places complete bans and regulations on medical cannabis activity in the City based upon various health, safety and welfare and land use findings relating to cannabis cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

**WHEREAS**, on August 1, 2017, at a lawfully noticed hearing, the Planning Commission for the City of King heard and considered the issue of increasing the maximum number of manufacturing permits the City will approve. The Planning Commission, upon hearing and considering the issue of increasing the maximum number of manufacturing permits, recommends that the City Council of the City of King increase the maximum number of manufacturing permits the City will approve from six (6) to ten (10).

**WHEREAS**, in November of 2016 the Adult Use of Marijuana Act (“AUMA”) was approved by a majority of California voters. The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products. Adults, age 21 and older, will be allowed to possess cannabis and grow certain amounts at home for personal use; and

**WHEREAS**, the AUMA did not provide for a specific effective date, thus the provisions of the AUMA regarding personal use, possession, and cultivation of cannabis became effective the day after the November 8, 2016; and

**WHEREAS**, the AUMA’s proposed Health & Safety Code section 11362.1(a)(3), will make it lawful under state and local law for any person twenty-one (21) years of age or older to “Possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants”; and

**WHEREAS**, the City wishes to enact regulations governing commercial cultivation of cannabis at this time; and

**WHEREAS**, the AUMA’s proposed Health & Safety Code section 11362.2(b) explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis so long as the City does not prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

**WHEREAS**, several California cities have reported negative impacts of cannabis cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of cannabis), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests); and

**WHEREAS**, cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

**WHEREAS**, due to the value of cannabis plants and their strong smell (which alerts others to their locations), cannabis cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety; and

**WHEREAS**, unregulated cannabis cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance, in that cannabis cultivation has been shown to involve avoidance of environmental laws and regulations, and has resulted in the pollution of waters and navigable waterways in the State of California; and

**WHEREAS**, the indoor cultivation of cannabis has potential adverse effects to the structural integrity of the buildings in which cannabis is cultivated, 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 buildings, its occupants, and neighboring buildings and residents; and

**WHEREAS**, unregulated indoor cultivation of cannabis can be harmful to the public health, safety and welfare, given electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

**WHEREAS**, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of cannabis 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 and/or crime; and

**WHEREAS**, MMRSA and AUMA mandated comprehensive state licensing and regulatory framework for cultivation, manufacturing, distribution, transporting, testing and dispensing cannabis and cannabis products; however, implementing regulations have yet to be written and state licenses may not be available until 2018; and

**WHEREAS**, there are numerous well publicized studies and reports, as well as numerous documented incident in Monterey County and throughout the State, which show that unregulated cannabis activities have a significant adverse effect on the community; and

**WHEREAS**, the City finds that the absence of a formal regulatory framework the adverse impacts frequently associated with commercial cannabis activities will occur, resulting in an unregulated and potentially significant negative impact upon the environment and upon public health, safety, and welfare of the community; and

**WHEREAS**, outdoor cannabis cultivation and unregulated indoor cannabis cultivation are likely to generate these negative effects on the public health, safety, and welfare in the City, based on the experiences of other cities; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City desires to explicitly prohibit the outdoor cultivation of commercial cannabis for both recreational and medical use; and

**WHEREAS**, pursuant to the above-described express statutory authority and its police power, the City also desires to enact reasonable regulations for the indoor cultivation, manufacturing, testing, distribution, or consumption of commercial recreational and medical cannabis; and

**WHEREAS**, absent clear regulation, cannabis cultivation in the City poses a potential threat to the public peace, health, and safety, and, unless the City takes action to regulate it, the secondary impacts described above are likely to occur very soon after the passage of the AUMA; and

**WHEREAS**, the City has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the City by regulating the commercial cultivation of recreational and medical cannabis; and

**WHEREAS**, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, manufacturing, testing, distribution, or consumption of cannabis which is illegal under state or federal law; and

**WHEREAS**, it is the intent of the City to regulation commercial cannabis activities, both recreational and medical, within the boundaries of the City.

**NOW THEREFORE**, the City Council of the City of King does hereby ordain as follows:

**SECTION 1.** The above recitals are incorporated are hereby by reference.

**SECTION 2.** The Ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) It is also exempt because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by prohibiting environmentally destructive components of unregulated cannabis cultivation. (CEQA Guidelines §§ 15307 and 15308.)

**SECTION 3.** Chapter 17.03, of Title 17, of the King City Municipal Code and the Sections specifically identified below are amended to read as follows:

### **Chapter 17.03**

#### **COMMERCIAL CANNABIS ACTIVITY**

##### **Section 17.03.040 Licenses and Permits.**

- (f) A commercial cannabis permit shall be governed by the following requirements and/or limitations:
  - (6) An application for renewal of a commercial cannabis permit shall be denied if any of the following exists:
    - (A) The application for renewal of the commercial cannabis permit is filed less than sixty (60) calendar days before its expiration.
    - (B) The commercial cannabis permit is suspended or revoked at the time the application for renewal is submitted or suspended or revoked while the application for renewal is pending.
    - (C) The commercial cannabis business or activity has not been in regular and continuous operation during the four (4) months prior to the submission of the application for renewal.

- (D) The commercial cannabis business or activity fails to conform to the requirements of this Chapter, any provision of the King City Municipal Code, any condition(s) imposed as part of a conditional use permit, and/or zoning requirement.
- (E) The applicant for renewal of the commercial cannabis permit fails to renew its State of California license.
- (F) The applicant for renewal has failed to pay in full any fees, administrative citation fines, penalties and/or costs issued by the City relating to the commercial cannabis business and/or activity, unless assessment of the fees, administrative citation fines, penalties and/or costs are being appealed.
- (G) A violation of subsection 17.03.210(i) of this Chapter.

**Section 17.03.210 Operating Requirements.**

In addition to those operating requirements specifically set forth elsewhere in this Chapter and except as may otherwise be expressly set forth in this Chapter, the following operating requirements shall apply to all commercial cannabis businesses operating in the City of King.

(i) Odor Control.

(1) Odor control devices and techniques shall be incorporated in all commercial cannabis businesses to ensure that odors from cannabis are not detectable off-site. Commercial cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside is not detected outside of the facility, anywhere on an adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business.

(2) In order to determine the existence of a violation of this subsection, 17.03.210(i), the City may measure for cannabis odor at the commercial cannabis business with an approved field olfactometer device, including but not limited to a Nasal Ranger Field Olfactometer® or Scentometer®, according to the manufacturer's specifications and operating instructions. The threshold of detection (Dilutions to Threshold or D/T) will be determined in a sample of the ambient air after it is diluted with three (3) equally sized samples of odor-free air. Two (2) samples or observations will be taken not less than fifteen minutes apart within a one hour period. The two (2) samples will be taken at the building site of the commercial cannabis business. If the threshold of detection is four (4) or greater, the commercial cannabis business or commercial cannabis permit holder and/or the

property owner will be issued a Notice to Abate Public Nuisance. The notice shall include the following:

- (A) the King City Municipal Code violation which constitutes the public nuisance;
- (B) the required remedy for abating the public nuisance; and
- (C) provide a reasonable time period to abate the public nuisance, unless the public nuisance constitutes an immediate threat to public health, safety and welfare.

Failure to timely abate the public nuisance may result in immediate suspension or revocation of the commercial cannabis permit as provided within section 17.03.150 of this Chapter. In addition, an application for renewal of a commercial cannabis permit shall be denied pursuant to section 17.03.040(f)(6)(G).

(3) Every person or entity owning, possessing, or having charge or control of real property within the city shall manage that property and control the environment thereon in a manner so as not to violate the provisions of this subsection, 17.03.210(i), and the owner shall be liable for violations of the provisions of this subsection, 17.03.210(i), regardless of any contract or agreement with any third party regarding the property.

(4) Every occupant, lessee, or holder of any possessory interest in real property shall maintain the property in a manner so as not to violate the provisions of this subsection, 17.03.210(i).

(5) An appeal of the Notice to Abate Public Nuisance shall be filed with the City Clerk within ten (10) calendar days from the date upon the notice and shall provide the specific basis for granting the appeal. An untimely filed appeal shall constitute a waiver of the commercial cannabis permittee's appeal of the notice. Further, the ten (10) day time period for filing an appeal shall be jurisdictional, and as such, an untimely appeal shall not be considered by the City.

(6) The City is authorized to seek reimbursement from the commercial cannabis permit holder and/or the commercial cannabis business for all costs, including but not limited to court costs, attorney's fees, filing fees, administrative time and fees and employee time, incurred while enforcing the requirements of section 17.03.210(i). The requirements of this subsection shall be in addition to any other provision provided for within the King City Municipal Code.

(7) The requirements of this subsection, 17.03.210(i), may be amended for time to time by majority vote of the City Council of the City of King, and as such, all commercial cannabis businesses shall complying with any and all amendments to this subsection enacted by the City.

(8) All current commercial cannabis businesses shall have sixty (60) days from the effective date of this Ordinance to bring their businesses into compliance with the requirements of this subsection, 17.03.210(i).

(n) Greenhouses. Greenhouses shall only be utilized for commercial cannabis cultivation and/or nurseries. A greenhouse shall be a fully enclosed permanent structure with solid walls that are clad in an opaque material with climate control, such as heating and ventilation capabilities and supplemental artificial lighting, and that uses a combination of natural and supplemental artificial lighting. The cultivation and nursery activities conducted within a greenhouse shall not be visible from any public right of way or adjacent private property. No Translucent Manufactured Structures may be built or erected within seven hundred-fifty (750) feet of any residential zone area within the City. All greenhouses shall comply with the requirements of this Chapter and the King City Municipal Code, including the adopted requirements of the California Building Code, the California Fire Code and/or any other code adopted or incorporated by reference within the King City Municipal Code. The City Manager shall have authority, upon consultation with the City Attorney, to establish additional regulations and/or guidelines for operating greenhouses for commercial cannabis cultivation and/or nurseries within the City.

**SECTION 4: EFFECTIVE DATE.**

This Ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the Ordinance, or a summary of the Ordinance, shall be published once in a newspaper of general circulation.

**I HEREBY CERTIFY** that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_ 2018, and adopted the Ordinance after the second reading at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following roll call vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
**STEVEN ADAMS, City Clerk**

**CITY OF KING**

By: \_\_\_\_\_  
**MIKE LEBARRE**, Mayor

I, \_\_\_\_\_, City Clerk of the City of King, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of King on the date and by the vote indicated herein.