

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

TUESDAY, APRIL 2, 2019
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, 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 January 15, 2019 Planning Commission Meeting
Recommendation: Approve and file.

7. PUBLIC HEARINGS

- A. Project: Condominium Conversion and Construction of New Condominium Ordinance
- Applicant: City of King
- Location: The regulatory ordinance would be applicable citywide.
- Consideration: Regulations applicable to residential, commercial and mixed residential and commercial condominium conversion and creation.
- Recommendation: Staff recommends the Planning Commission approve the attached Resolution which recommends the City Council establish and regulate condominium conversions and construction of new condominiums.

Environmental Determination: In accordance with the California Environmental Quality Act ("CEQA"), and pursuant to CEQA Guideline Sections 15378 and 15061 (b) (3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment.

B. Project: Amendment of the City's Zoning Ordinance Pertaining to Commercial Cannabis Activities 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 regulatory ordinance that regulates commercial cannabis activities in the City of King, including the increasing the number of manufacturing permits authorized within the City of King, limiting the amount of zoned land which can be utilized for commercial cannabis activities, and removing the prohibition on cannabis deliveries within the City of King as required by the Bureau of Cannabis Control 2019 regulations. These amendments clarify and refines Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of the King City Municipal Code. Personal cannabis activity, both recreational and medical, remains governed by the requirements of Chapter 7.55 of Title 7 of the King City Municipal Code.

Recommendation: Staff recommends the Planning Commission 1) adopt the Resolution recommending the adoption of the Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of The King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King.

Environmental Determination: The Ordinances are 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, 15308.)

8. NON-PUBLIC HEARINGS

A. None

9. PLANNING COMMISSIONER REPORTS

10. DIRECTOR'S REPORT –

11. WRITTEN CORRESPONDENCE

12. ADJOURNMENT

UPCOMING REGULAR MEETINGS

APRIL

April 2nd	6:00 p.m.	Planning Commission
April 8th	6:00 p.m.	Airport Advisory Committee
April 9th	6:00 p.m.	City Council
April 15 th	6:00 p.m.	Recreation Commission
April 16th	6:00 p.m.	Planning Commission
April 23rd	6:00 p.m.	City Council

MAY

May 7th	6:00 p.m.	Planning Commission
May 13 th	6:00 p.m.	Airport Advisory Committee
May 14th	6:00 p.m.	City Council
May 20 th	6:00 p.m.	Recreation Commission
May 21 st	6:00 p.m.	Planning Commission
May 28 th	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

EIS: Environmental Impact Statement

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)

MIMTC: 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

MIND: 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

January 15, 2019

1. Call to Order

Chair Nuck called the regular meeting of the Planning Commission of the City of King to order at 6:00 p.m.

2. Pledge of Allegiance

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

3. Roll Call

Chairperson David Nuck X Oscar Avalos X

David Mendez X Domingo Uribe X

Staff present: Community Development Director Doreen Liberto; Admin. Asst./Deputy City Clerk, Erica Sonne.

4. Public Comments

None

5. Presentations

6. Consent Calendar

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: December 18, 2018

Action: Motion made by Commissioner Mendez to approve minutes of December 18, 2018. Seconded by Commissioner Avalos. Motion carried 4-0.

7. PUBLIC HEARINGS

A. Project: CUP 2016-001 (Amendment No. 3)

Applicant: SGH Holdings, LLC

Location: 218 N. First St., King City, CA. 93930

Consideration: The proposed amendment includes changes to Condition of Approval No. 3 (Development Impact Fees)

Recommendation: Staff recommends the Planning Commission amend Condition of Approval No. 3, as outlined in the staff report.

Environmental
Determination:

A Mitigated Negative Declaration was approved by Planning Commission on March 22, 2016 and March 6, 2018.

Community Development Liberto introduced this item.

Commissioner Uribe feels that they should just pay upfront. His concern is they are making money and they aren't paying their way. The City should take its share now.

Commissioner Mendez thought that the project would not go past the 10 years and we would not get the 50% back.

Chair Nuck opened the public hearing,

Linda Rossi SGH, stated that they are willing to pay the fees. They intend to ask for extensions and will probably go passed the 10 years.

Ms. Rossi asked why it was a temporary use. Ms. Liberto stated that it was because the use was not allowed in this building to begin with.

Chair Nuck closed the public hearing.

Commissioner Avalos made a motion to adopt the attached Resolution 2019-248 amend Condition of Approval No. 3. Commissioner Uribe seconded. Motion carried 4-0.

- B. Project: Ordinance to Amend Title 17, Chapter 17.19, Inclusionary Housing Requirements
- Applicant: City of King
- Location: Citywide.
- Consideration: Recommended changes to the inclusionary Housing Ordinance includes but is not limited to housing program and in-lieu fee requirements
- Recommendation: Planning Commission adopt the attached Resolution recommending the City Council amend the Inclusion Housing Requirement Ordinance.
- Environmental Determination: In accordance with the California environmental Quality Act (CEQA) and pursuant to CEQS Guidelines Sections 15378 and 15061 (b) (3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment.

Community Development Director Liberto introduced this item.

Chair Nuck opened the public hearing,

Seeing no one come forward

Chair Nuck closed the public hearing.

Commissioner Uribe made a motion to adopt the attached Resolution 2019-249 recommending the City Council amend the Inclusion Housing Requirement Ordinance. Commissioner Avalos seconded. Motion carried 4-0.

8. NON- PUBLIC HEARINGS –

A. None

9. Regular Business- None

10. Planning Commission Report – None

11. Director Reports- None

12. Written Correspondence– None

13. Adjournment

There being no further business, the Planning Commission meeting was adjourned at 6:44 p.m.

David Nuck
Planning Commission Chairperson
City of King

Erica Sonne
Planning Commission Secretary
City of King



Item No. 7(A)

REPORT TO THE PLANNING COMMISSION

DATE: APRIL 2, 2019

TO: HONORABLE CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR

RE: CONDOMINIUM CONVERSION AND CONSTRUCTION OF NEW CONDOMINIUM ORDINANCE

RECOMMENDATION:

It is recommended the Planning Commission approve the attached Resolution which recommends the City Council establish and regulate condominium conversions and construction of new condominiums.

BACKGROUND:

The City adopted Condominium, Cooperative and Townhouse Development standards, which are located in Municipal Code Chapter 17.54, in 1973. Since 1973, there have been numerous changes to the law. The proposed Ordinance includes the construction of new residential, commercial and mixed-use (residential and commercial) condominiums and the conversion of existing residential and commercial units to condominiums. The proposed Ordinance complies with State laws and tailored to meet the needs of King City.

DISCUSSION:

A condominium is considered an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space. California uses the **Davis Stirling Common Interest Development Act** ("Davis-Sterling Act"). The Davis-Sterling Act is the primary set of laws that govern common interest developments and homeowners' associations. A central purpose behind the Davis-Stirling Act is protection of residential condominium owners. The Davis-Stirling Act is also intended to provide guidance and rules for residential homeowners' associations, which consist of and are often managed by the residential condominium owners. Portions of the Davis-Stirling Act applied to commercial and industrial common interest developments until 2014. At that time, SB 752 created the **Commercial and Industrial Common Interest Development Act** which provides for the creation and regulations of commercial and industrial common interest condominiums. *It is important to note that mixed-use common interest developments*

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that include commercial and residential condominiums are still governed by the Davis-Stirling Act.

In addition to the **Davis-Stirling Act** and **Commercial and Industrial Common Interest Development Act** regulating condominiums, the **State Subdivision Map Act (“SMA”)** also regulates them. The SMA regulates the division of land, including the creation of air parcels for condominium purposes. Additionally, local jurisdictions can regulate new condominiums and condo conversions through adoption of condominium Ordinance (Municipal Code).

Following are highlights in the proposed Ordinance.

1. The Ordinance addresses:
 - a. **new** residential, commercial and mixed-use condominiums. Mixed-use condominiums include residential and commercial units. Industrial condominiums are not permitted.
 - b. **conversion** of existing residential, commercial and mixed-use units to condominiums. Conversion of existing industrial units are not permitted.
2. **Conditional use permits (“CUP”) and tentative or parcel maps** (depending on the number of units being created) are needed for **new condominiums and condominium conversions**.
3. **Homeowners’ Associations (“HOA”)** need to be formed for new residential and mixed-use condominiums and residential and mixed-use condominiums. The HOA will be responsible for maintaining and providing service to common areas.
4. Some **New Residential Condominium standards** include (§17.49.040 (c)):
 - a. building height, required yards, building separations, signs and off-street parking and other explicit regulations are the same as in the Municipal Code.
 - b. maximum allowable density in a project located in a R-3 district is one unit for every two thousand (2,000) square feet of gross area; R-4 district, one (1) unit for every fifteen hundred (1,500) square feet of gross area.
 - c. maximum allowable density in any residential, condominium or similar use in the P-D district shall be one (1) unit for every fifteen (1,500) hundred square feet of gross land area.
5. The standards for **New Commercial Condominium** are located in §17.49.040 (d) and include architectural and site design standards.:

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6. **Some Residential Condominium Conversion standards include (§17.49.055):**
7. Commercial Condominium Conversion standards require that each unit must have a minimum of one-thousand (1,000) square feet (§17.49.070 (a)).
8. The Ordinance recognizes that conversion of existing multiple-residential structures may present unique problems and therefore the Planning Commission is empowered to waive certain standards related to parking, private open space and other development criterial.
9. Condominium Conversion Findings of Fact:
 - a. In addition to the findings of facts that need to be made for CUP and tentative or parcel map applications, additional findings of fact need to be made for each project by the Planning Commission.

Advantages

The Ordinance brings the City's condominium and condominium conversion standards into compliance with recent changes to State law.

Disadvantages

There are no disadvantages.

ENVIRONMENTAL DETERMINATION:

In accordance with the California Environmental Quality Act ("**CEQA**"), and pursuant to both CEQA Guideline Sections 15378 and 15061(b)(3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment.

PUBLIC NOTICE AND INPUT:

A public hearing notice was published in The Californian newspaper on **March 23, 2019**.

ALTERNATIVES:

The following alternatives are provided for Planning Commission consideration:

1. Adopt the attached Resolution, recommending the City Council adopt the Ordinance;
or

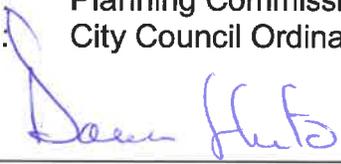
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2. Request modifications to the Ordinance; or
3. Do not recommend the City Council adopt the Ordinance; or
4. Provide other direction to staff.

Exhibits:

Exhibit 1: Planning Commission Resolution
Exhibit 2: City Council Ordinance No. 2019-

Approved by:



Doreen Liberto, AICP, Community Development Director

EXHIBIT 1

RESOLUTION NO. 2019-250

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF KING RECOMMENDING THE CITY COUNCIL OF THE CITY OF KING ESTABLISH AND REGULATE CONDOMINIUM CONVERSION AND CONSTRUCTION OF NEW CONDOMINIUMS BY REPEALING SECTIONS OF CHAPTER 17.54 OF TITLE 17 AND ADOPT CHAPTER 17.49 TO TITLE 17 OF THE KING CITY MUNICIPAL CODE.

WHEREAS, the City Council of the City of King ("**Council**") initiated an amendment of the King City Municipal Code to establish and regulate certain condominium construction and condominium conversion standards; and

WHEREAS, on April 2, 2019, the City of King Planning Commission ("**Commission**") conducted a public hearing to consider both the proposed Ordinance, and after considering public testimony, the staff report and all submitted evidence to support the applications, the Commission recommended the Council approve the proposed Ordinance; and

WHEREAS, the proposed Ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

WHEREAS, in accordance with the California Environmental Quality Act ("**CEQA**"), and pursuant to CEQA Guideline Sections 15378 and 15061 (b) (3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Planning Commission of the City of King adopts Resolution No. 2019-250, attached as **Exhibit 1**, which recommends the City Council adopt the Ordinance to establish and regulate condominium conversions and condominium construction by repealing sections of Chapter 17.54 and adopting Chapter 17.49, as shown on **Exhibit 2**.

This resolution was passed and adopted this **2nd day of April 2019**, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

DAVID NUCK, CHAIRPERSON

ATTEST:

ERICA SONNE, SECRETARY TO THE PLANNING COMMISSION

This resolution was passed and adopted this **2nd day of April 2019**, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

DAVID NUCK, CHAIRPERSON

ATTEST: _____
ERICA SONNE, SECRETARY TO THE PLANNING COMMISSION

ORDINANCE NO. 2019-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING TO ESTABLISH AND REGULATE CONDOMINIUM CONVERSION AND CONSTRUCTION BY REPEALING SECTIONS OF CHAPTER 17.54 OF TITLE 17 AND ADOPTING CHAPTER 17.49 TO TITLE 17 OF THE KING CITY MUNICIPAL CODE [SLC1]

WHEREAS, the City Council of the City of King (“Council”) initiated an amendment of the King City Municipal Code to establish and regulate certain condominium construction and condominium conversion standards; and

WHEREAS, on [REDACTED], 2019, the City of King Planning Commission (“Commission”) conducted a public hearing to consider both the proposed ordinance, and after considering public testimony, the staff report and all submitted evidence to support the applications, the Commission recommended the Council [deny/approve] the proposed ordinance; and

WHEREAS, the proposed ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

WHEREAS, in accordance with the California Environmental Quality Act (“CEQA”), and pursuant to both CEQA Guideline Sections 15378 and 15061(b)(3), this activity is not a “project” subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment; and

WHEREAS, on [REDACTED], 2019, the Council conducted a public hearing to consider the Commission’s recommendation, and after considering public testimony, the staff report and all submitted evidence, the Council now desires to approve the proposed ordinance.

NOW THEREFORE, the people of the chartered City of King City do ordain as follows:

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

SECTION 2. The City Council has reviewed the proposed ordinance and hereby finds that is consistent with the General Plan and all applicable Specific Plans.

SECTION 3. The City Council, based upon its own independent judgement, finds that the proposed ordinance promotes and protects the health, safety, welfare and quality of life of City residents, including protections against nuisances.

SECTION 4. The proposed ordinance was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines (“CEQA Guidelines”), and the environmental regulations of the City. The City Council finds and determines that the proposed ordinance is not a “project” for the purposes of CEQA and consistent with CEQA Guidelines Section 15378, as it merely establishes or updates an existing administrative process and will not result in direct or indirect physical changes in the environment as compared to the current baseline.[SLC2] Additionally, the City Council finds and determines for the same reasons that even if the proposed ordinance were a project for the purposes of CEQA, there is no possibility that this project may

have a significant adverse effect on the environment pursuant to CEQA Guidelines, Section 15061(b)(3). Therefore, the proposed ordinance is not subject to CEQA.

SECTION 5. The following Sections of Chapter 17.54 of Title 17 of the King Municipal Code are repealed in their entirety:

- 17.54.070 Regulations generally.
- 17.54.080 Condominium classifications.
- 17.54.090 Maximum density—R-1 district.
- 17.54.100 Maximum density—R-2, R-3 and R-4 districts.
- 17.54.110 Gross area defined.
- 17.54.120 Outdoor common area slope.
- 17.54.130 Distance separating structures on same lot.
- 17.54.140 Setbacks.
- 17.54.150 Use permit—Information required.
- 17.54.151 Condominium conversions—Buyer protection provisions.
- 17.54.152 Condominium conversions—Tenant protection provisions.
- 17.54.153 Condominium conversions—Variance from standards and requirements—Imposition of conditions.
- 17.54.160 Application of provisions.
- 17.54.170 Permit application procedure.

Further, the general title for said Sections of Chapter 17.54 of Title 17 of the King Municipal Code shall be amended to read as follows:

~~II. Condominium, Cooperative and Townhouse Developments (Reserved)~~

SECTION 6. Chapter 17.49, of Title 17, of the King Municipal Code is adopted in its entirety to read as follows:

Chapter 17.49 CONDOMINIUM REGULATIONS

Sections:

- 17.49.010 Purpose and Intent.**
- 17.49.020 Definitions.**
- 17.49.030 Applications Required.**
- 17.49.040 New Condominiums.**
- 17.49.050 Condominium Conversions.**
- 17.49.055 Residential Condominium Conversion Project.**
- 17.49.060 Variance from Standards and Requirements – Imposition of Conditions - Residential.**

17.49.070 Commercial Condominium Conversion Projects.

17.49.080 Mixed-Use Condominium Conversion Project.

The purpose of this Chapter is to allow the new construction of residential, commercial and mixed-use condominiums, and the conversion of residential, commercial and mixed-use condominiums, in a manner to protect the interests of the community and prospective purchasers [SLC3] for the health, safety and general welfare of the public.

Section 17.49.020 Definitions.

- (a) "Condominium_[NDP4]" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential, commercial or mixed-use building. A condominium may include in addition a separate interest in other portions of such real property.
- (b) "Communal area" shall mean the entire project excepting all units granted or reserved.
- (c) "Condominium project" or "project_[NDP5]" means a real property development consisting of condominiums.
- (d) "Condominium unit" or "units" means the individual spaces within a condominium project owned as individual estates.
- (e) "Homeowners' association" means an organization of homeowners of a particular project with the purpose of maintaining and providing services to communal areas.
- (f) "Mixed-Use" means a type of project that blends any combination of residential and commercial uses that are physically and functionally integrated and provides pedestrian connections.
- (h) "Property owners' association" means an organization of property owners with the purpose of maintaining and providing services to common amenities.
- (i) "Residential" means for the purposes of condominium conversions, a unit in rental housing which is intended for human habitation.
- (j) "Tenant or existing tenant" means a person or persons renting or leasing a unit.

Section 17.49.030 Applications Required.

Conditional use permit and tentative or parcel map applications are required for new condominiums and condominium conversion projects. In addition to the criteria applicable for a conditional use permit and tentative or parcel map, additional application. Requirements may be needed, as listed in this Chapter.

Section 17.49.040 New Condominiums.

- (a) Purpose. The ownership of residential, commercial and mixed-use condominiums is distinguished by a sharing of responsibility that is not common to most other types of development. Industrial condominiums are not permitted. As a result, the purpose of this section is to establish criteria for the conversion of existing buildings to residential, commercial and mixed-use condominiums to prevent problems inherent in community ownership that might be detrimental to the health, safety, and welfare of residents of such projects and the community at large.
- (b) Applications required. Conditional use permit and tentative or parcel map applications are required. In addition to the submittal requirements for a conditional use permit and tentative or parcel map, the follow information shall be provided:
 - (1) A copy of the declaration of restrictions proposed for recordation under the provisions of the Davis-Sterling Common Interest Development Act (Civil Code Sections 4000 – 6150). The applicant shall identify the entity that will maintain all common amenities.
 - (2) If the applicant is a corporation, a copy of the articles of incorporation and a copy of the bylaws of the corporation.
 - (3) Any other information deemed necessary or desirable for the purpose of assisting the planning commission in its determination on the application, and of conditions to be imposed.
- (c) Residential projects.
 - (1) Regulations. Regulations governing use, building height, required yards, building separations, signs and off-street parking and other explicit regulations where applicable, shall be those of the zoning district within which the development site is located.
 - (2) Maximum density. Maximum allowable density in any residential condominium project shall be:
 - (A) R-1 district density shall be as specified in any R-1 district;
 - (B) Maximum allowable density in any residential, condominium or similar use in any R-2 district shall be one (1) unit for every twenty-five hundred (2,500) square feet of gross land area.
 - (C) Maximum allowable density in any residential, condominium or similar use in any R-3 district shall be one unit for every two thousand (2,000) square feet of

gross area; R-4 district, one (1) unit for every fifteen hundred (1,500) square feet of gross area.

(D) Maximum allowable density in any residential, condominium or similar use in the P-D district shall be one (1) unit for every fifteen (1,500) hundred square feet of gross land area.

(3) Distance separating structures on same lot. In any condominium in which residential uses are proposed in any R district, the main structure shall be separated from any other main structure on the same lot by a distance of not less than one-half (1/2) of the sum of the height of the two (2) buildings, and in no case less than twenty (20') feet.

(4) Setbacks. The side yard setback of any residential main structure on any condominium lot of a public street shall be five (5') feet, and the distance between the front lot boundary and the rear lot boundary is one hundred (100') feet or less, and ten (10') feet if the distance between the front lot boundary and the rear lot boundary is over one hundred (100') feet.

(5) Homeowners' association. As a condition of approval on the project, a homeowners' association shall be required to maintain and provide service to common areas.

(d) Commercial project.

(1) Standards. A commercial condominium subdivision map may be approved, conditionally approved, or denied, based upon an evaluation of the proposed condominium plan in relation to the following criteria:

(A) Architectural and site design. Architectural evaluation shall include but not be limited to the following:

(i) The general appearance of the proposed development shall contribute to the orderly and harmonious development of the community as a whole;

(ii) The design of all exterior surfaces of the buildings shall create an aesthetically pleasing [NDP6]project; and

(iii) General architectural and site considerations, including site layout, topography, open space, location of buildings, access, circulation, colors, building materials, screening, lighting and signing and similar elements, have been designed to provide a desirable environment [NDP7]. The design should minimize visibility of service areas (trash,

delivery, outdoor storage, loading areas), backflow prevention devices, and other utilities from public areas.

(B) Environmental preservation. The design, location and orientation of all buildings shall be arranged to preserve natural features by minimizing the disturbance to the physical environment. Natural features such as trees, waterways, historic landmarks, or slopes shall be delineated in the development plan and considered when planning the location and orientation of buildings, open spaces, underground services, walks, paved areas, parking areas, and finished grade elevations.

(C) Landscaping.

(i) All setback areas fronting on or visible from an adjacent public street, and all open space areas shall be landscaped in an attractive manner. The developer shall provide a method assuring landscape maintenance.

(ii) Decorative design elements such as fountains, pools, benches, sculptures, planters, and similar elements may be permitted, providing such elements are incorporated as a part of the landscaping plans, except where otherwise prohibited.

(iii) Permanent and automatic irrigation facilities shall be provided in all planted landscaped areas.

(iv) Landscaping requirements shall be consistent with the zoning district in which the project is located.

(v) The property owner shall be required to enter into and record a landscape maintenance agreement.

(D) Lighting. The subdivider shall install an on-site lighting system on all vehicular access ways and along major walkways. Such lighting shall be directed onto the driveways and walkways within the development, and located and shielded to eliminate off-site glare. Lighting shall also be installed within all covered and/or enclosed parking areas.

(E) Lot coverage. Lot coverage shall conform to requirements of the zoning district in which the condominium is proposed.

- (F) Open space. Common. Common open space areas shall be designed and located within the project to afford use by all owners of the project.
- (G) Minimum parking requirements. Off-street parking shall be provided as required by the municipal Code for residential and commercial sites. Parking areas shall be held in common and no assigned parking is allowed.
- (H) Trash and recycling collection area. Trash and recycling collection areas shall be provided and sized appropriately to accommodate trash and recycling. Such areas shall be enclosed within a building or screened with masonry walls six feet or higher to screen trash receptacles. Materials other than masonry may be used when specifically approved by the planning commission finds that due to extenuating circumstances regarding location, such as the proximity to underground utilities, the footing for masonry construction would be a detriment to such utilities. Access gates or doors to any trash area, not enclosed within a building, are to be of opaque material.
- (I) Signage. The property owners shall apply for and obtain a master sign permit under the Municipal Code before any permanent sign is placed.
- (J) Streets. The width of the public rights-of-way and roadway of the street(s) abutting the property shall conform to the minimum standard of the transportation element of the general plan.
- (K) Declaration. The declaration shall include an agreement providing for common area maintenance, a clear designation of parking and signage rights, and a method for resolving differences.
- (L) Structural and electrical. A commercial condominium project is to be subject to the structural requirements contained in the Municipal Code. Each unit shall have its own circuit breaker panel for all electrical circuits and outlets which serve the unit. The panel shall be accessible without leaving the unit.
- (M) Reserves for capital maintenance replacement. Before approval of the final map, the subdivider shall provide to the city manager evidence of:
 - (i) The establishment of a reserve account fund in the name of the condominium association, and
 - (ii) A reserve study showing the amount which must be set aside monthly for the reserve account. The

funds shall be earmarked for long-term reserves for capital and maintenance replacement.

- (e) Mixed-Use project. Mixed-Use projects shall meet the requirements of section 17.49.040 of this Chapter, as applicable.[SLC8]

Section 17.49.050 Condominium Conversions.

- (a) Purpose. The ownership of residential, commercial and mixed-use condominiums is distinguished by a sharing of responsibility that is not common to most other types of development. As a result, the purpose of this section is to establish criteria for the conversion of existing buildings to residential, commercial, and mixed-use condominiums to prevent problems inherent in community ownership that might be detrimental to the health, safety, and welfare of residents of such projects and the community at large. [NDP9] Industrial condominium conversions are not permitted.
- (b) Applicability. The regulations set forth in this section shall apply to the conversion of existing buildings into residential, commercial or mixed-use condominiums.
 - (1) Applications required. Conditional use permit and tentative or parcel map applications are required. In addition to the criteria applicable for a conditional use permit and tentative or parcel map, the following criteria shall apply:
 - (A) The proposed condominium conversion units shall be substantially equal to new condominium units in terms of quality of architecture, construction, and other design features.
 - (B) Prior to final approval of the condominium conversion, the building and site containing the condominium units shall be fully conforming to all current zoning regulations including, but not limited to permitted uses, floor area ratio, building height, setbacks, parking requirements, and signs.
 - (C) The project shall meet the condominium development standards for treatment of utilities and requirements for provision of covenants, conditions, and restrictions.
 - (D) Each tenant, and each prospective tenant has, or will have, received all applicable notices and rights now or hereafter required by this section or by applicable State law. Residential condominium conversions have additional tenant requirements, as outlined in section 17.49.055.
 - (2) Content of applications. The applicant shall file with the community development department, in a form provided by the community development department, a completed application for a conditional use permit pursuant to Chapter 17 of the King City Municipal Code, a completed application for a tentative map or parcel map pursuant

to Chapter 16 of the King City Municipal Code, and the additional requirements pursuant to this chapter. In addition, the following reports shall be submitted as a part of the applications for condominium conversion:

- (A) Plumbing, fire, electrical, and earthquake codes and a listing of any conditions which may cause health or safety hazards.
- (B) A structural pest control inspection report performed by a licensed pest control operator.
- (C) Reports from State licensed contractors for the heating and plumbing systems of the project, as well as reports for the condition of the roof. All such inspections shall have been conducted within three (3) months prior to the submittal of the application for condominium conversion.
- (D) A tenant listing, including a plan for tenant notification, relocation, and financial assistance, if any.
- (E) A copy of the proposed declaration of project elements and covenants, conditions, and restrictions. plumbing, fire, electrical, and earthquake codes and a listing of any conditions which may cause health or safety hazards.
- (F) A structural pest control inspection report performed by a licensed pest control operator.
- (G) Reports from State licensed contractors for the heating and plumbing systems of the project, as well as reports for the condition of the roof. All such inspections shall have been conducted within three (3) months prior to the submittal of the application for condominium conversion.
- (H) A tenant listing, including a plan for tenant notification, relocation, and financial assistance, if any.
- (I) A copy of the proposed declaration of project elements and covenants, conditions, and plumbing, fire, electrical, and earthquake codes and a listing of any conditions which may cause health or safety hazards.
- (J) A site plan certified as to accuracy by a licensed civil engineer or architect, containing the following information pertaining to the project as it exists and as it is proposed:
 - (i) Site and structure information, including all buildings, structures, yards, landscaping, open spaces, signs, and number and sizes of buildings.
 - (ii) Accessory facilities information showing the locations and describing the nature and extent of recreation facilities,

laundry facilities, maintenance facilities, office areas, storage areas, and trash storage areas.

(iii) Easement information showing the locations and dimensions of public utility, water, sewer, and drainage easements.

(iv) Parking and access information, showing all points of regular access and emergency vehicle access, the locations, dimensions and total number of covered and uncovered parking spaces provided for employees and guests, and the dimensions and locations of all aisles, driveways, turning areas, and obstructions, including, but not limited to, columns, poles, walls, and trees.

(c) Findings of fact. In addition to the regular findings of fact that need to be made in the affirmative for a conditional use permit and tentative tract or tentative parcel map, the following findings shall be made to approve any conversion:

(1) That the proposed conversion is consistent with the General Plan Land Use Map and any applicable policies.

(2) That the proposed conversion will conform to the provisions of the Municipal Code in effect at the time of approval, except as otherwise provided in this Section; and

(3) That the overall design and physical condition of the condominium conversion will achieve a high standard of appearance, quality, useful life, and safety.

(d) Utilities: Location and metering.

(1) Location. No common gas or electrical connection or service shall be allowed. Easements for gas and electric lines shall be provided in the common ownership area where lateral service connections shall take place. Gas, electric, and water services to each unit shall be located completely within the lot lines or ownership space of each unit or within common tenant areas.

(2) Metering. Each unit shall be separately metered for gas, electricity, and water, unless the applicant proposes that either the homeowners' association or the property owners' association will be response for these.

(e) Refurbishing and restoration. All main buildings, structures, fences, accessory buildings, sidewalks, driveways, landscaped areas, and additional elements as required by the building department shall be refurbished and restored as necessary to achieve a high standard of appearance, quality, and safety. The refurbishing and restoration are subject to the review and approval by the building official.

Section 17.49.055 Residential Condominium Conversion Project.

(a) Buyer protection provisions. In additions to the requirements elsewhere in this chapter, the following additional requirements apply to residential condominium conversion projects:

(1) The developer shall provide a one (1) year warranty to the buyer of each unit at the close of escrow covering dishwashers, garbage disposals, stoves, refrigerators, hot-water heaters, air conditioners, garage door openers; and all heating, plumbing, electrical and structural systems that are provided.

(2) When a homeowners' association takes over management of the development, the developer shall provide a one (1) year warranty to the association covering swimming pools and pool equipment (filter, pumps, chlorinator, heating system) and any other appliance or item of mechanical equipment to be owned by the association. Said warranties shall include both labor and parts required to repair or replace any such item, but shall be conditioned upon the proper use and operation of the same by the buyer in accordance with manufacturer's specifications. To secure performance of the developer's obligation to buyers and to the homeowners' association under these warranties, the developer shall, as each unit of the condominium is sold, deposit in escrow with a title insurance company in Monterey County an amount equal to one percent of the gross sale price of said unit, with appropriate instructions for the disbursement of said funds for the benefit of the buyer or the association, as the case may be, in the event of the breach of any such warranty and the failure of the developer to cure such breach within a reasonable period of time. Said escrow shall terminate at the expiration of one (1) year after the date on which the last unit within the project is sold, whereupon all undisbursed funds shall be returned to the developer. All escrow fees and charges shall be paid by the developer.

Before recommending that a conditional use permit for the project be granted, the planning commission shall approve the escrow holder selected and shall obtain the approval of the city attorney with respect to the terms and conditions of said escrow and the form of the proposed escrow instructions submitted by the developer with his use permit application.

(b) Tenant protection provisions. The following provisions of this section shall apply to residential condominium conversion projects, including that residential portion of a mixed-use condominium conversion project:

(1) Notices to existing tenants. Within ten (10) days after the filing of a conditional use permit and tentative tract or parcel map applications, or whichever is filed first, the developer shall cause

written notice of the filing of said application to be delivered personally or sent by registered or certified mail (return receipt requested) to the occupant of each occupied dwelling unit in the building proposed to be converted to a condominium.

- (2) Termination of lease or agreement. The developer shall allow a tenant in the building proposed to be converted to terminate any lease or rental agreement, without penalty, provided that the tenant gives to the developer, either personally or by registered or certified mail (return receipt requested), a notice of his or her election to terminate within thirty days after receiving the notice referred to in subsection (b)(1) of this section.
- (3) The applicant shall perform the following additional notification of tenants:
 - (A) Prior to filing of map. At least sixty (60) days prior to the filing of a tentative map, each of the tenants of the proposed condominium shall be given by registered or certified mail [NDP10] a written notice of intention to convert. Notice shall be in the form provided in Government Code section 66452.18, as may be amended.
 - (B) Prior [NDP11] to a planning commission public hearing. A copy of the written staff report to the planning commission on the proposed conversion shall be delivered to each tenant of the subject property at least six (6) days prior to the hearing date.
 - (C) Prior to filing of public report. At least ten (10) days prior to the filing of a public report with the California Department of Real Estate, each tenant of the proposed condominium project shall receive by first class mail a written notice that an application for a public report will be, or has been, submitted to the Department of Real Estate and that such report will be available on request.
 - (D) Subsequent to approval of a final map. At least ten (10) days after the approval of a final map, each tenant of the proposed condominium project shall be given by first class mail written notice of the approval of a final map for the proposed conversion.
 - (E) Prior to termination of tenancy. After the approval of a tentative map for the proposed conversion, each tenant of the proposed condominium project shall be given by first class mail one-hundred and eighty (180) days written notice of termination of tenancy due to the conversion or proposed conversion. Notice shall be in the form provided in Government Code section 66452.19, as may be amended.
 - (F) Subsequent to issuance of public report. Within five (5) days after receipt of the public report, each tenant of the proposed

condominium project shall be given by first class mail written notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than ninety (90) days from the date of issuance of the subdivision public report, unless the tenant gives prior written notice of his or her intention not to exercise the right. Notice shall be in the form provided in Government Code section 66452.20, as may be amended.

(c) Notice to prospective tenants. Notices of public hearings required pursuant to this chapter and state law shall be mailed by the city to the list of prospective tenants provided by the applicant. The applicant shall perform the additional following notification of prospective tenants:

(1) Notice of conversion. Notice of the proposed conversion shall be given to a prospective tenant applying for rental of a unit of the subject property before acceptance of any rent or deposit, in the form provided in Government Code section 66452.51, as may be amended.

(2) Notice of filing of a tentative map. At least sixty (60) days prior to the filing of a tentative map, notice of such filing shall be given to a prospective tenant applying for rental of a unit of the subject property before acceptance of any rent or deposit.

(3) Posting of notice. Regardless of each prospective tenant being informed of the proposed conversion prior to the finalization of any rent or lease agreement, a notice of such intended conversion shall be posted and maintained at all times in a highly visible location outside the manager's office or unit or the rental office, if any.

(4) Notice subsequent to approval of the final map. If a final map has been approved for a condominium project of five (5) or more units, and a unit is thereafter rented, notice shall be given to a prospective tenant of the right of first refusal to purchase the unit, in the form provided in, and as may be required by, Government Code section 66459, as may be amended. [NDP12]

(d) Monthly reports to the city. Commencing with the filing of an application and until such time as all tenants have received the benefits, the applicant shall provide a written report to the city no less than every thirty (30) days that includes the following information:

(1) A listing of tenant names and addresses, including forwarding addresses, updated regularly.

(2) The date on which each tenant or prospective tenant began occupancy and ended occupancy.

- (3) Copies of all notices, letters, and related correspondence mailed, delivered or otherwise presented to tenants and prospective tenants and a listing of the tenants and prospective tenants who received the material.
 - (4) A brief description of the occupancy status of each tenant indicating the intent of the tenant to end occupancy or to purchase his unit.
- (e) Tenant benefits. The applicant shall provide benefits to tenants as follows:
- (1) Option to purchase. Each tenant, and any prospective tenant who rents a unit subsequent to approval of a final map, shall be given notice of an exclusive right to contract for the purchase of his respective unit upon the same terms and conditions that such unit will be initially offered to the general public or on terms more favorable to the tenant. Such right shall run for a period of not less than ninety (90) days from the date of the issuance of the subdivision public report, or from the date of the approval of a final map if the project consists of four (4) or less units, or in the case of prospective tenants, from the date of the notice to prospective tenants.
 - (2) Limitation on evictions. No eviction shall occur as a result of conversion for at least one-hundred and eighty (180) days after the approval of a tentative map and the end of the ninety (90) day period of the exclusive option to purchase the unit. If the units are not offered for sale to the tenants within two (2) years after the approval of a final map, the minimum one-hundred and eighty (180) day notice prior to the eviction, including a ninety (90) day exclusive option to purchase period, shall be provided to each tenant prior to eviction from the time the units are offered for sale.
 - (3) Moving expenses. Each tenant renting a unit at the time of the approval of the tentative map and still renting a unit ten (10) days prior to the approval of the final map, but not including prospective tenants notified pursuant to subsection (f) of this section, shall be entitled to the following moving expenses, due and payable at the time of moving.
- (f) Harassment of tenants. After the approval of the tentative map, action by the landlord which is intended to cause the tenant to quit the premises prior to the one-hundred and eighty (180) day notice, including unreasonable rent increases, shall be considered harassment and shall be grounds for the denial of a final map.

Section 17.49.060 Variance from Standards and Requirements – Imposition of Conditions - Residential.

Recognizing that the conversion of existing multiple-residential structures to condominium usage presents unique problems with respect to the standards

and requirements set forth in this chapter, the planning commission is empowered to vary any such standard or requirement, or to waive the same, with respect to a specific project upon a specific finding or findings that the creation of the proposed condominium will not contravene the intent and purpose of this chapter. Project characteristics of critical importance in determining whether or not a proposed conversion will contravene the intent and purpose of this chapter include the age of the structure and the degree to which the proposal varies from the required standards for:

- (1) parking.
- (2) private open space.
- (3) other development criteria contained in this title.

The planning commission is also empowered to impose conditions on any approval given which would require that specified modifications, designed to bring a structure or site into compliance with standards and requirements contained in this chapter, be made to the structure or site proposed for conversion. Notwithstanding, as a condition of approval on the project, a homeowners' association shall be required to maintain and provide service to communal areas.

Section 17.49.070 Commercial Condominium Conversion Projects.

- (a) Minimum floor area. No conversion shall be permitted of any unit in the building having a unit size of less than one-thousand (1,000) square feet.
- (b) Physical elements report. A report shall be provided, detailing the structural condition of all physical elements of the proposed project as they exist at the time of application and as they are to be made by the subdivider prior to the sale of any units in order to refurbish and restore the project and to achieve a high degree of appearance, safety, comfort, and utility. Such elements include, but are not limited to: foundations, interior and exterior walls, ceilings, floors, roofs, insulation, sound transmission characteristics, water heaters, furnaces, air conditioners, recreational facilities and equipment, and maintenance equipment. Regarding each such element, the report shall state the age and present condition, the approximate useful remaining life, the cost of maintenance and replacement, and the proposed means of paying for the maintenance or replacement of the element.
- (c) Communal areas. A report outlining the condition and responsibility of all communal areas, such as the parking lot, landscaping, signs, communal amenities.
- (d) Project documents. The applicant shall submit the proposed declaration of covenants, conditions, and restrictions to be applied to the project. The declaration shall include, but shall not be limited to, the following information:

- (1) An agreement providing for common area maintenance including recreational facilities, landscaping of the project and all public right-of-way abutting the project, and all structural, mechanical, and utility elements of the proposed project, together with an estimate of initial assessment fees anticipated for the initial and future maintenance and replacement of such facilities and elements.
 - (2) A requirement that the homeowners' association maintain all private water, sewer, and storm drainage lines serving the project, and pay all charges for water, sewer, and waste collection service for the project.
 - (3) A provision granting emergency access to the project site by, and right of entry to, the city.
 - (4) A provision granting to the city the right to enforce the declaration.
 - (5) The assignment of parking and storage spaces.
 - (6) A grant of all easements and cross-easements for access, utilities, and maintenance necessitated by the conversion.
 - (7) A requirement that the owners' association provide or require adequate fire insurance protection for the project, including each structure, each unit and its contents, and the common area and facilities.
 - (8) A provision prohibiting the alteration of any party wall or fixture along any party wall, or the doing of anything which may impair its integrity as a fire wall; and
 - (9) A provision granting the city the right to veto any amendment to the declaration with respect to any of the requirements of this subsection.
- (e) Unavailability of information. When the applicant can demonstrate that information required by this section is not available, this requirement may be modified by the Community Development Director, if it can be determined that such modification is consistent with the purposes of this Chapter.
- (f) Additional information. Any other information shall be submitted by the applicant which, in the opinion of the Community Development Director, will assist in determining whether the proposed project will be consistent with the purposes of this article.
- (g) Property owners' association. As a condition of approval on the project, a homeowners' association *may be* required to maintain and provide service to communal areas.

Section 17.49.080 Mixed-Use Condominium Conversion Project.

Mixed-Use condominium conversion projects shall comply with all applicable requirements of this Chapter, the King City Municipal Code and/or all state and federal statutes, regulations and laws.

SECTION 7. If any provision(s) of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 8. 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 _____, 2019, and adopted the Ordinance after the second reading at a regular meeting held on the ____ day of _____, 2019, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____
MIKE LEBARRE, Mayor

APPROVED AS TO FORM:

By: _____
ROY C. SANTOS, City Attorney
Aleshire & Wynder, LLP

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.



Item No. 7(B)

REPORT TO THE CITY COUNCIL

DATE: APRIL 2, 2019

TO: PLANNING COMMISSION

FROM: ROY C. SANTOS, ASSISTANT CITY ATTORNEY

RE: An Ordinance of The City Council of The City of King Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, of Title 17 of the King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King

RECOMMENDATION:

Staff recommends the Planning Commission: 1) adopt the Resolution recommending the adoption of the Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of The King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King.

BACKGROUND:

The City's current commercial cannabis ordinance authorizes the issuance of 15 cannabis manufacturing permits and the operation of no more than 15 cannabis manufacturing facilities. The City has received requests for manufacturing permits which exceed the current authorized limits.

The City's ordinance also limits cultivation and nursery permits to a total of 1,300,000 square feet. There are no limits on distribution and non-storefront delivery. As part of the strategic plan visioning process, the Council identified a goal of maintaining diversity of businesses in the business park and industrial area. Current limits in the ordinance may not be sufficient to accommodate this.

PLANNING COMMISSION

An Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of the King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King

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DISCUSSION:

Commercial Cannabis Cultivation Permits

The current cultivation square footage limit applies to the square footage of the canopy only. Since this involves only a portion of each site, the overall potential impact on the industrial area is much greater. When this is combined with the fact that the number of permits for other cannabis uses are not restricted, staff does not believe current regulations prevent the entire industrial area from converting to cannabis uses at some time in the future. This may impact the ability of other businesses important to meeting needs in the community from finding available land and focusing too much of the economy on one industry creates risks to the economic stability of the City if market forces are negatively impacted in that industry.

As a result, staff is recommending that an additional restriction be created on overall land that may be dedicated for uses related to cannabis permits. Staff is recommending 60% for the limit, but the Council may direct staff to draft the percentage that it feels appropriate. The figure of 60% was selected because it does not prevent cannabis from becoming the dominant industry in the industrial area, but still maintains a significant portion of the area for other businesses.

Commercial Cannabis Manufacturing Permits

City staff have received numerous applications to issue commercial cannabis manufacturing permits; however, these requests for permits exceed the amount of commercial cannabis manufacturing permits authorized by the King City Municipal Code. Section 17.03.270(d) states “[n]o more than fifteen (15) commercial cannabis manufacturing businesses may operate within the City at any one time and no more than fifteen (15) commercial cannabis manufacturing permits shall be issued by the City for commercial cannabis manufacturing businesses to operate within the City.” Without increasing the number of authorized commercial cannabis manufacturing businesses and permits, no additional businesses can operate within the City.

Tax revenues for cannabis manufacturing operations are significantly less than cultivation but tend to pay higher paying jobs and staff anticipates they may be less impacted by fluctuations in the market for cannabis. Therefore, staff is recommending amending the Municipal Code to increase the number of commercial cannabis manufacturing businesses that can operate within the City

PLANNING COMMISSION

An Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of the King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King

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from fifteen (15) to twenty-five (25) and number of authorized commercial cannabis manufacturing permits from fifteen (15) to twenty-five (25).

Commercial Cannabis Deliveries

On January 16, 2019, the Office of Administrative Law (OAL) approved final regulations of the Bureau of Cannabis Control (BCC) and other State licensing authorities (the Department of Public Health and the Department of Food and Agriculture) regarding the various types of commercial cannabis activities, including deliveries. The regulations constitute revised versions of the prior emergency regulations which were adopted in late 2017 and early 2018.

For the City of King, by far the most impactful change to the regulations is the addition of an express provision to the BCC regulations stating that **cannabis may be delivered to any jurisdiction within the State of California**, provided only that the delivery complies with the delivery provisions of the BCC regulations (16 CCR § 5416(d) ("Section 5416(d)"). The provision makes no reference to any obligation to comply with local law in conducting cannabis deliveries.

Section 5416(d) authorizes the delivery of cannabis by State licensees into all cities statewide, including those that have adopted ordinances prohibiting cannabis deliveries within city limits. If a city attempts to enforce a local cannabis delivery prohibition while section 5416(d) is in effect, the enforcement efforts will expose the city to the risk of a meritorious legal challenge by the subject delivery licensee, which could result in a court order invalidating the enforcement action, significant litigation expenses, and an award of prevailing party attorneys' fees against the city where such fees are authorized by the city's municipal code.

As a result, City staff proposes amending the Commercial Cannabis Ordinance to remove the language banning cannabis deliveries within city limits.

ENVIRONMENTAL REVIEW:

The Ordinances are 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, 15308.)

PLANNING COMMISSION

An Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of the King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King

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ALTERNATIVES:

The following alternatives are provided for Commission consideration:

1. Approve the recommendations of staff; or
2. Provide other direction to staff.

Exhibits:

1. Ordinance Amending Chapter 17.03, Sections 020, 040, 060, 070, 210, 230, 260, and 270, and Chapter 17.30, Section 020 and Chapter 17.31, Section 020, Of Title 17 Of the King City Municipal Code Pertaining to Commercial Cannabis Activity Including Manufacturing Permits, Cannabis Activity Limitations, and Cannabis Deliveries within the City of King.

Prepared and Approved by:



Roy Santos | City Attorney

RESOLUTION NO. 2019-251**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 AMENDING CHAPTER 17.03, SECTIONS 020, 040, 060, 070, 210, 230, 260, AND 270 AND CHAPTER 17.30, SECTION 020 AND CHAPTER 17.31, SECTION 020, OF TITLE 17 OF THE KING CITY MUNICIPAL CODE PERTAINING TO COMMERCIAL CANNABIS ACTIVITY INCLUDING MANUFACTURING PERMITS, COMMERCIAL CANNABIS ACTIVITY LIMITATIONS AND CANNABIS DELIVERIES WITHIN THE CITY OF KING**

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 837 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; 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 ordinances 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 and specific plan 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*).

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 2nd day of April, 2019.

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. _____ was duly and regularly passed and adopted by the Planning Commission on the 2nd day of April, 2019, 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