
STAFF REPORT

SPECIAL MEETING OF THE SAN MARCOS PLANNING COMMISSION

MEETING DATE: October 9, 2017

SUBJECT: Consideration of Existing and Proposed Land Use Regulations
Addressing Cannabis Operations, Uses and Activities
Resolution PC 17-4660, Case No. TA 17-0004

RECOMMENDATION

ADOPT the proposed Resolution recommending that the City Council adopt an ordinance amending certain provisions under Title 20 of the San Marcos Municipal Code (SMMC) to address cannabis operations, uses and activities in the City of San Marcos; and recommending that the City Council approve the proposed Negative Declaration (ND 17-006).

INTRODUCTION

Regulating cannabis operations, uses and activities is necessary to continue protecting and preserving the public health, safety and welfare of the community, and to prevent adverse impacts that such operations, uses and activities may have on nearby properties and residents. In recent years, any number of jurisdictions throughout the State and nationally have reported negative impacts associated with cannabis operations, uses and/or activities.

Currently, the City of San Marcos (City) regulates medicinal cannabis dispensaries, cultivation and processing under SMMC Chapter 5.54 and certain provisions of SMMC Title 20 (Zoning Ordinance), as well as prohibiting medicinal and non-medicinal cannabis operations, uses and activities under a temporary moratorium. Following the approval of recent State legislation, however, it became clear that if the City desires to permanently prohibit and/or regulate certain other cannabis operations, uses and activities permitted and/or licensed under State law, whether medicinal or non-medicinal, then the City would be required to adopt express prohibitions and/or regulations under the SMMC and Zoning Ordinance.

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The proposed Resolution recommends that the City Council adopt an ordinance amending various provisions of the Zoning Ordinance regulating cannabis operations, uses and activities within the City, including, but not limited to, prohibiting commercial cannabis activities and the outdoor cultivation of cannabis, as well as reasonably regulating the personal indoor cultivation of cannabis consistent with State law. The proposed Resolution further recommends that the City Council approve the Negative Declaration (ND 17-006) prepared under the California Environmental Quality Act (CEQA).

DISCUSSION

The City has a compelling interest in regulating cannabis operations, uses and activities to protect and preserve the health, safety and welfare of its residents and businesses, and to retain land use authority over those operations, use and activities.

Recent State Laws Regulating Cannabis (2016 to Present)

AUMA (Proposition 64)

On November 8, 2016, California voters approved Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which took effect on November 9, 2016, to allow persons 21 years of age and older to (i) smoke, ingest or otherwise use nonmedical marijuana and marijuana products; (ii) purchase, possess, transport, obtain or give away without compensation to persons age 21 and older, up to 28.5 grams of marijuana or 8 grams of concentrated marijuana; and (iii) plant, cultivate or process up to six (6) living marijuana plants for personal use.

MAUCRSA

On June 27, 2017, the Governor of California signed into law Senate Bill (SB) 94, a budget trailer bill known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which took effect immediately to create a single State regulatory system for medicinal and non-medicinal commercial cannabis businesses. The MAUCRSA repealed the Medical Marijuana Regulation and Safety Act (MMRSA) adopted in 2015, and incorporated certain provisions from the MMRSA into the licensing provisions of the AUMA to create one consolidated act known as the MAUCRSA.

City's Existing Laws Regulating Cannabis

SMMC

Since 2006, the City has expressly prohibited certain operations, uses and/or activities relating to medical marijuana. The City currently prohibits certain commercial cannabis activities under SMMC Chapter 5.54, including, but not limited to, medicinal marijuana dispensaries, whether fixed or mobile, and the manufacturing and processing of marijuana in all zones within the City's jurisdictional limits. However, the SMMC does not expressly prohibit non-medicinal cannabis dispensaries and other commercial cannabis activities, which may soon be licensed by the State under the MAUCRSA, in compliance with the City's authority under current State law.

The City also currently prohibits the commercial cultivation and processing of marijuana within the City as a business activity under SMMC Chapter 5.54 and as a land use under the Zoning Ordinance. However, the SMMC does not expressly permit the personal cultivation of cannabis indoors, as required by State law, or regulate the personal cultivation of cannabis indoors, in compliance with the City's authority under current State law.

Temporary Moratorium

On October 25, 2016, in anticipation that the AUMA may be approved by California voters, the City Council adopted an urgency Ordinance imposing a temporary moratorium on the establishment of marijuana dispensaries, the outdoor cultivation and processing of marijuana, the indoor cultivation and processing of marijuana in excess of what would be permitted under the AUMA, and the use and possession of marijuana and marijuana products in public places, places where smoking is prohibited under the SMMC and otherwise, and on City property. The temporary moratorium was adopted pursuant to the requirements under California Government Code Section 65858.

On November 15, 2016, after the AUMA was approved, the City Council adopted an urgency ordinance to extend the temporary moratorium for a first extension period of ten (10) months and fifteen (15) days to allow the City additional time to study the potential impacts that marijuana operations, uses and activities may have on the public health, safety and welfare as a result of the approval of the AUMA on November 8, 2016; research and craft appropriate regulations and possible amendments to the provisions of the SMMC

and Zoning Ordinance governing marijuana dispensaries, the cultivation and processing of marijuana indoors and outdoors, and the use and possession of marijuana and marijuana products in public places; and to ensure that regulations relating to marijuana operations, uses and activities can be implemented in such a way as to minimize any harmful effects they might have on the City's residents, as well as nearby businesses and property owners.

On August 8, 2017, the City Council adopted another urgency ordinance to extend the temporary moratorium for a final extension period of one (1) year through September 30, 2018, to provide additional time for the City to further study the issues surrounding medicinal and non-medicinal cannabis operations, uses and activities following the adoption of the MAUCRSA on June 27, 2017, as well as to modify certain provisions under the SMMC to bring it into conformance with the latest laws, and consider provisions not previously contemplated or expressly identified by the City following the adoption of the MAUCRSA to regulate or prohibit certain operations, uses and activities of the cannabis industry, as desired.

Proposed Zoning Ordinance Regulations Governing Cannabis

The proposed Resolution recommends that the City Council adopt an ordinance to amend the City's existing zoning and land use regulations under Title 20 of the SMMC, in compliance with the authority granted to the City under the MAUCRSA, as follows.

- **Prohibited Uses (SMMC 20.205.030)** – The proposed Ordinance would expressly prohibit commercial cannabis activities and the outdoor cultivation of cannabis as land uses, consistent with the prohibitions as commercial operations, uses and/or activities under Chapter 5.54 of the SMMC.
- **Specific Use Standards (SMMC 20.400.045)** – The proposed Ordinance would add specific use standards regulating cannabis cultivation indoors, consistent with the limitations proposed under Chapter 5.54 of the SMMC. Under the MAUCRSA, local governments are permitted to enact and enforce reasonable regulations, but not prohibit, the personal cultivation of cannabis indoors. Adopting the proposed Ordinance would impose reasonable regulations on the cultivation of cannabis indoors, including, but not limited to limiting indoor cultivation to up to six (6) living cannabis plants total per private residence; requiring cultivation to occur within a

fully enclosed structure secured by a lock and key and inaccessible to persons under 21 years old; restricting visibility of the grow from the public right-of-way; requiring lighting, plumbing and electrical components to comply with applicable State and local laws; restricting the use of volatile solvents for cultivation; requiring proper ventilation and prohibiting humidity or mold problems; requiring that cultivation does not constitute a public nuisance; requiring the private residence where cultivation occurs to remain a residence with legal and functioning facilities; and requiring a compliant fire extinguisher to be on premises. The City chose not to require the express consent of the property owner or landlord to cultivate cannabis indoors because of any potential Fair Housing Act and/or Americans with Disabilities Act issues that may arise from denying patients the right to cultivate cannabis indoors in compliance with State law.

- **Definitions (SMMC 20.600)** – The proposed Ordinance would add definitions under the Zoning Ordinance for the following terms and phrases: “Cannabis,” “Cannabis Cultivation, Indoor (land use),” “Cannabis Cultivation, Outdoor (land use),” “Cannabis Products,” and “Commercial Cannabis Activity (land use)”. The proposed Ordinance would delete the definition for “Marijuana” as State law now refers to marijuana as “cannabis”, and also amends the definition of “Research & Development (land use)” to state that it does not include commercial cannabis activity or commercial cultivation, outdoor, which are prohibited uses under the Zoning Ordinance.

Under the MAUCRSA, the State will allocate a portion of the proceeds it receives from the excise and cultivation taxes imposed on cannabis cultivation and the retail sale of cannabis or cannabis products to local agencies to assist with law enforcement, fire protection or other local programs addressing public health and safety associated with the implementation of the AUMA. However, the City would not be eligible for those grant funds as the MAUCRSA expressly prohibits the distribution of grants to local agencies that ban the cultivation of cannabis and/or the retail sale of cannabis or cannabis products. Additionally, adopting the proposed Resolution recommending that the City Council adopt an ordinance amending the City's zoning and land use regulations to prohibit cannabis operations, uses and/or activities would not allow the City to impose taxes on certain cannabis operations, uses and/or activities that it may be authorized to impose under the MAUCRSA pursuant to voter approval.

Negative Impacts Associated with Cannabis Operations, Uses and Activities

Other agencies, in California and nationally, have reported negative impacts associated with cannabis operations, uses and activities, including, but not limited to, the following:

- Other agencies that have permitted medicinal and/or non-medicinal commercial cannabis activities have reported experiencing the following negative impacts: an overconcentration of such land uses; armed burglaries, robberies and thefts occurring at dispensaries; an increase in other criminal activity in the vicinity of dispensaries; persons under 21 years of age, drug addicts and documented gang members loitering around dispensaries; dispensary customers using cannabis and then driving under the influence of cannabis; dispensaries selling illegal drugs other than cannabis; dispensaries selling cannabis and cannabis products to minors; loss of trade for commercial businesses located near dispensaries; excessive energy use; and faulty and dangerous electrical and plumbing problems at dispensaries, among others.
- Many of the violent crimes reported at cannabis dispensaries involve the use of weapons. Since the passage of the AUMA in November 2016, a number of armed robberies have been reported at cannabis dispensaries throughout the State, including, but not limited to, at dispensaries in Chula Vista (9/27/17), in which a dispensary security guard's gun was stolen by the robbers; Los Angeles (9/18/17); San Diego (9/9/17), in which a dispensary employee was pistol whipped in the head; Santa Rosa (8/21/17); Spring Valley (8/10/17); South Los Angeles (7/20/17), in which at least four people were shot, including a dispensary security guard who was killed; Inglewood (7/19/17), in which a person was shot and killed; Modesto (7/13/17); Berkeley (6/25/17); Encanto (6/10/17), in which a dispensary employee was tied up during the robbery; Spring Valley (6/6/17); Los Angeles (5/11/17), in which a dispensary security guard shot the robber; Perris (5/1/17); Cathedral City (4/26/17); Anaheim (3/27/17), which also caused the Anaheim Police Department to put a lockdown on nearby schools after the suspects fled and could not be found; Bakersfield (2/16/17); Chatsworth (2/11/17), in which a dispensary employee was shot and the dispensary security guard detained by the robbers; Mar Valley (1/18/17), in which an armed robber was shot and killed by a dispensary security guard; and South Los Angeles (11/23/16), in which a dispensary security guard was shot.

- On April 29, 2017, employees at an unlicensed cannabis dispensary illegally operating in San Marcos were robbed at gunpoint. The robbery was reported by a witness outside of the dispensary who reported suspicious activity at the dispensary, rather than by the employees of the dispensary.
- On June 29, 2017, a shooting at a cannabis dispensary in Chula Vista resulted in the shooting victim having to undergo surgery. Following the shooting, a neighboring business owner stated he is concerned about how the dispensary may impact his business and is fearful that he will lose customers because of the dispensary. As a result of the police investigation into the shooting, the neighboring business owner was forced to reschedule a dozen appointments as police taped off the parking lot to collect evidence.
- Several agencies throughout the State have reported adverse effects and nuisance impacts relating to cannabis cultivation, including, but not limited to: the strong and potentially noxious odors associated with mature cannabis plants; impacts to the environment, including spraying of chemicals and toxins (i.e. pesticides, herbicides, fertilizers, rodenticides and insecticides) and the potential for storm water runoff and groundwater impacts, greenhouse gas emissions, excessive energy use, generator use producing localized noise, irresponsible and significant water use (the California Department of Fish & Wildlife reported that researchers estimate each plant of cannabis consumes 6 gallons of water each day, which is problematic since California public agencies stress the importance of continued water conservation measures given the recent drought, the lingering effects of the drought, and the potential for future droughts), and dangerous fire hazards; problems associated with mold, fungus and pests; abandonment of trash and waste once plants are harvested; proximity of children to areas under cultivation; visibility of grows from the public right-of-way; and an increase in crime, including robberies, theft and trespassing.
- On September 27, 2016, in the Bronx neighborhood of New York, a battalion fire chief was killed, and twenty others were injured, including nine firefighters, six police officers, three gas utility workers, and two civilians, when a cannabis-growing operation inside a home exploded.

- Since the passage of the AUMA in November 2016, there have also been a number of fires and explosions reported at residences and businesses throughout the State as a result of illegal cannabis-growing operations, including an explosion at an apartment building in Carlsbad in November 2016, which was caused by a chemical marijuana extraction process. The explosion caused a fire and blew out all of the windows in the unit. Additionally, in April 2017, approximately 400 cannabis plants were discovered in a commercial building in Garden Grove following an electrical fire caused by an overloaded electrical circuit. According to the Garden Grove Police Department, overloading an electrical circuit is commonly done to fuel high-intensity ultra violet lights needed to grow cannabis plants, which results in fire hazards. More recently, in September 2017, an explosion at an illegal cannabis extraction laboratory in Mendocino County resulted in a large hole in the roof of the building after an unknown object shot through the ceiling.

It is recommended that the Planning Commission approve the attached Resolution recommending that the City Council adopt an ordinance amending the Zoning Ordinance because the City has a compelling interest in protecting and preserving the health, safety and welfare of the community and preventing adverse impacts that cannabis operations, uses and/or activities may have on nearby properties and residents.

A draft of the entire Ordinance, including proposed provisions regulating cannabis under SMMC Chapter 5.54, is provided to the Planning Commission for background and reference purposes. However, any recommendation by the Planning Commission to the City Council relates only to the land use regulations under the Zoning Ordinance and the proposed Negative Declaration (ND 17-006), over which the Planning Commission has jurisdiction to make recommendations to the City Council.

ENVIRONMENTAL DETERMINATION

In accordance with CEQA, Negative Declaration (ND 17-006) was prepared for the proposed ordinance recommended for City Council adoption, and was circulated for public review from September 7, 2017 to September 27, 2017. During the public review period, the City received no comments from the public. The proposed Negative Declaration (ND 17-006) identified no environmental impacts associated with the adoption of the proposed ordinance.

ATTACHMENT(S)

- A. Resolution PC 17-4660 Amending SMMC Title 20
- B. Negative Declaration (ND 17-0006)
- C. City Council Ordinance Amending SMMC Chapter 5.54 and Title 20

Prepared by:

Wendy L. House

Wendy L. House, Deputy City Attorney

Reviewed by:

Joseph Farace

Joseph Farace, Principal Planner

Approved and Submitted by:

Karen Brindley

Karen Brindley, Planning Division Manager

RESOLUTION PC 17-4660

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS
RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE TO AMEND
SECTIONS 20.205.030, 20.600.030, 20.600.050, 20.600.150 AND 20.600.200 AND
ADD SECTION 20.400.045 TO TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE
TO ADDRESS CANNABIS OPERATIONS, USES AND ACTIVITIES IN THE CITY OF SAN
MARCOS

Case No. TA 17-0004
City of San Marcos

WHEREAS, in 2006, the City Council of the City of San Marcos (City) enacted Chapter 5.54 under the San Marcos Municipal Code (SMMC) to prohibit the establishment of medical marijuana dispensaries as businesses, whether fixed or mobile, in all zones within the City's jurisdictional limits.

WHEREAS, in 2015, the Governor of California approved the Medical Marijuana Regulation and Safety Act (MMRSA), to create a comprehensive State licensing system for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills (AB) 243 and 266 and Senate Bill (SB) 643; and

WHEREAS, in January and February 2016, the City Council amended SMMC Chapter 5.54 and Title 20 of the SMMC (Zoning Ordinance), respectively, to expressly and separately prohibit the commercial cultivation of marijuana, the delivery of marijuana, and the processing of marijuana within the City as business operations, activities and land uses; and

WHEREAS, on October 25, 2016, in anticipation that Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) may be approved imminently by California voters, the City Council adopted an urgency ordinance pursuant to California Government Code Section 65858, which imposed a temporary moratorium on the establishment of marijuana dispensaries, the outdoor cultivation and processing of marijuana, the indoor cultivation and processing of marijuana in excess of what is permitted under the AUMA, and the use and possession of marijuana and marijuana products in public places, places where smoking is prohibited under the SMMC and otherwise, and on City property; and

WHEREAS, on November 8, 2016, California voters approved the AUMA, which took effect on November 9, 2016, to allow persons 21 years of age and older to (i) smoke, ingest or otherwise use non-medical marijuana and marijuana products; (ii) purchase, possess, transport, obtain or give away without compensation to persons age 21 and older, up to 28.5 grams of

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marijuana or 8 grams of concentrated marijuana; and (iii) plant, cultivate or process up to six (6) living marijuana plants for personal use; and

WHEREAS, on November 15, 2016, the City Council adopted an urgency ordinance to extend the temporary moratorium for a period of ten (10) months and fifteen (15) days to allow the City additional time to study the potential impacts that marijuana operations, activities and uses may have on the public health, safety and welfare as a result of the approval of the AUMA; research and craft appropriate regulations and possible amendments to the provisions of the SMMC and Zoning Ordinance governing marijuana dispensaries, the cultivation and processing of marijuana indoors and outdoors, and the use and possession of marijuana and marijuana products in public places; and to ensure that regulations relating to marijuana operations, activities and uses can be implemented in such a way as to minimize any harmful effects they might have on the City's residents, as well as nearby businesses and property owners; and

WHEREAS, on June 27, 2017, the Governor of California signed into law Senate Bill 94, a budget trailer bill known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which took effect immediately to create a single State regulatory system for medicinal and non-medicinal commercial cannabis businesses. The MAUCRSA repealed the MMRSA adopted in 2015, and incorporated certain provisions from the MMRSA into the licensing provisions of the AUMA to create one consolidated act known as the MAUCRSA; and

WHEREAS, on August 8, 2017, the City Council adopted an urgency ordinance to extend the temporary moratorium for a final period of one (1) year through September 30, 2018, to provide additional time for the City to further study the issues surrounding medicinal and non-medicinal cannabis operations, activities and uses following the approval of the MAUCRSA, as well as to modify certain provisions under the SMMC to bring it into conformance with the latest laws, and consider provisions not previously contemplated or expressly identified by the City following the adoption of the MAUCRSA to regulate or prohibit certain operations, activities and uses of the cannabis industry, as desired; and

WHEREAS, the MAUCRSA allows local governments to continue prohibiting or regulating commercial operations, activities and uses relating to cannabis, including, but not limited to, adopting and enforcing zoning and land use requirements and other local regulations prohibiting medicinal and non-medicinal cannabis businesses, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery and retail sale of cannabis and cannabis products; enacting

and enforcing reasonable regulations relating to the personal cultivation of cannabis indoors, and prohibiting the personal cultivation of cannabis outdoors; and prohibiting the possession, smoking and ingestion of cannabis and cannabis products in public places, places where smoking is prohibited under the SMMC and otherwise, and within buildings owned, leased or occupied by a State or local government agency, among other places; and

WHEREAS, local agencies that have permitted medicinal or non-medicinal cannabis dispensaries to operate in their jurisdictions, in California and nationally, have reported experiencing an overconcentration of such land uses; armed burglaries, robberies and thefts occurring at the dispensaries; an increase in other criminal activity in the vicinity of these dispensaries; persons under 21 years of age, drug addicts and documented gang members loitering at and around the dispensaries; dispensary customers using cannabis and then driving under the influence of cannabis; dispensaries selling illegal drugs other than cannabis; dispensaries selling cannabis and cannabis products to persons under 21 years of age; loss of trade for commercial businesses located near dispensaries; excessive energy use; and faulty and dangerous electrical and plumbing problems at the dispensaries; and

WHEREAS, many of the violent crimes reported at cannabis dispensaries involve the use of weapons. Since the passage of the AUMA in November 2016, a number of armed robberies have been reported at cannabis dispensaries throughout the State, including, but not limited to, at dispensaries in Chula Vista (9/27/17), in which a dispensary security guard's gun was stolen by the robbers; Los Angeles (9/18/17); San Diego (9/9/17), in which a dispensary employee was pistol whipped in the head; Santa Rosa (8/21/17); Spring Valley (8/10/17); South Los Angeles (7/20/17), in which at least four people were shot, including a dispensary security guard who was killed; Inglewood (7/19/17), in which a person was shot and killed; Modesto (7/13/17); Berkeley (6/25/17); Encanto (6/10/17), in which a dispensary employee was tied up during the robbery; Spring Valley (6/6/17); Los Angeles (5/11/17), in which a dispensary security guard shot the robber; Perris (5/1/17); Cathedral City (4/26/17); Anaheim (3/27/17), which also caused the Anaheim Police Department to put a lockdown on nearby schools after the suspects fled and could not be found; Bakersfield (2/16/17); Chatsworth (2/11/17), in which a dispensary employee was shot and the dispensary security guard detained by the robbers; Mar Valley (1/18/17), in which an armed robber was shot and killed by a dispensary security guard; and South Los Angeles (11/23/16), in which a dispensary security guard was shot; and

WHEREAS, on April 29, 2017, employees at an unlicensed cannabis dispensary illegally operating in San Marcos were robbed at gunpoint. The robbery was reported by a witness outside of the dispensary who reported suspicious activity at the dispensary, rather than by the employees of the dispensary; and

WHEREAS, on June 29, 2017, a shooting at a cannabis dispensary in Chula Vista resulted in the shooting victim having to undergo surgery. Following the shooting, a neighboring business owner stated he is concerned about how the dispensary may impact his business and is fearful that he will lose customers because of the dispensary. As a result of the police investigation into the shooting, the neighboring business owner was forced to reschedule a dozen appointments as police taped off the parking lot to collect evidence; and

WHEREAS, several jurisdictions throughout the State have reported adverse effects and nuisance impacts relating to cannabis cultivation, including but not limited to, the strong and potentially noxious odors associated with mature cannabis plants; impacts to the environment, including spraying of chemicals and toxins (i.e. fertilizers, pesticides, herbicides, rodenticides and insecticides) at grow sites and the potential for storm water runoff and groundwater impacts, greenhouse gas emissions, excessive energy use, generator use producing localized noise, irresponsible and significant water use (the California Department of Fish & Wildlife reported that researchers estimate each plant of cannabis consumes six gallons of water each day, which is problematic since California public agencies stress the importance of continued water conservation measures given the recent drought, the lingering effects of the drought, and the potential for future droughts), and dangerous fire hazards; problems associated with mold, fungus and pests; abandonment of trash and waste once plants are harvested; proximity of children to areas under cultivation; visibility of grows from the public right-of-way; and an increase in crime, including robberies, theft and trespassing; and

WHEREAS, on September 27, 2016, in the Bronx neighborhood of New York, a battalion fire chief was killed, and twenty others were injured, including nine firefighters, six police officers, three gas utility workers, and two civilians, when a cannabis-growing operation inside a home exploded; and

WHEREAS, more recently, since the passage of the AUMA in November 2016, there has also been a number of fires and explosions reported at residences and businesses throughout the State as a result of illegal cannabis-growing operations, including an explosion at an apartment building in Carlsbad in November 2016, which was caused by a chemical marijuana

extraction process. The explosion caused a fire and blew out all of the windows in the unit. Additionally, in April 2017, approximately 400 marijuana plants were discovered in a commercial building in Garden Grove following an electrical fire caused by an overloaded electrical circuit. According to the Garden Grove Police Department, overloading an electrical circuit is commonly done to fuel high-intensity ultra violet lights needed to grow marijuana plants, which results in fire hazards. More recently, in September 2017, an explosion at an illegal cannabis extraction laboratory in Mendocino County resulted in a large hole in the roof of the building after an unknown object shot through the ceiling; and

WHEREAS, while the City currently prohibits medical marijuana dispensaries, whether fixed or mobile, in all zones within the City's jurisdictional limits under SMMC Chapter 5.54, it does not expressly prohibit non-medicinal cannabis dispensaries or other commercial cannabis activities; and

WHEREAS, while the City currently prohibits all cultivation and processing of marijuana as a business activity under SMMC Chapter 5.54 and as a land use under the Zoning Ordinance, following the approval of the AUMA and the adoption of the MAUCRSA, the City must permit the limited personal cultivation of cannabis indoors in compliance with State law, but may impose certain regulations on such indoor cultivation in compliance with State law. The City does not currently regulate the personal cultivation of cannabis indoors; and

WHEREAS, the City desires to amend Sections 20.205.030, 20.600.030, 20.600.050, 20.600.150 and 20.600.200 of the Zoning Ordinance; and add Section 20.400.045 to the Zoning Ordinance relating to cannabis operations, uses and activities; and

WHEREAS, the Development Services Department did study said request and recommends approval of said request; and

WHEREAS, the required public hearing held on October 9, 2017 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission did consider a Negative Declaration (ND 17-006) for the subject request pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. The proposed Text Amendment to Title 20 (Zoning Ordinance) of the San Marcos Municipal Code will not adversely affect the implementation of the General Plan in that it does not conflict with any goal, objective, or policy of the General Plan.
2. The proposed Text Amendment to Title 20 (Zoning Ordinance) of the San Marcos Municipal Code will not be detrimental to the public health, safety, morals, and welfare in that the Text Amendment will address cannabis operations, uses and activities in the City of San Marcos.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitals are true and correct.
2. Negative Declaration (ND 17-006) prepared pursuant to CEQA is hereby recommended to the City Council for approval.
3. This Text Amendment to the Zoning Ordinance (Title 20 of the San Marcos Municipal Code) as shown in redlined, underlined additions and strikeouts in the attached Exhibit A, is hereby recommended to the City Council for approval.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, at a special meeting held on this 9th day of October, 2017, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

APPROVED:

Eric Flodine, Chairman

ATTEST:

Lisa Kiss, Office Specialist III

ATTACHMENT:

Exhibit A: Amended SMMC Title 20 (Zoning Ordinance) Regulations

CHAPTER 20.205 LAND USE AND DEVELOPMENT APPROVAL

Section 20.205.030 General Requirements

D. **Prohibited Uses.** For the purpose of conserving public health, safety, and general welfare, land uses listed in this section are prohibited within any Zone in the City. These uses shall be prohibited outright and not subject to the Director's discretion. The City is a community in the larger North County area and within the San Diego County metropolitan region, which comprises a broader economic area for industry and commerce. The combination of San Diego County's zoning requirements and the zoning requirements of the various cities within the county provide full provision for all types of uses necessary for development. The following land uses and business activities are prohibited in all Zones within the City:

- Automotive wrecking yards
- Hookah retailers or lounges
- Salvage and scrap yards
- Swap meets
- ~~Marijuana cultivation~~
- Commercial Cannabis Activity
- Cannabis Cultivation, Outdoor

CHAPTER 20.400 SPECIFIC USE STANDARDS

Section 20.400.045 Cannabis Cultivation, Indoor

Cannabis Cultivation, Indoor shall be permitted within a single Private Residence in all zones within the jurisdictional limits of the City of San Marcos to the extent such Cultivation is permitted by State law and subject to compliance with the following requirements. For purposes of this Section, the term "Private Residence" shall have the same meaning as the definition set forth in Chapter 5.54 of this Code, as that Section may be amended from time to time, and shall include a house, apartment unit, mobile home or other similar dwelling, and includes any accessory structure that is fully enclosed, secure and located upon the grounds of the Private Residence.

- A. Cultivation is limited to six (6) or fewer living Cannabis plants per Private Residence.
- B. Cultivation is permitted only within fully enclosed and secure structures within or upon the grounds of the Private Residence that are inaccessible to persons under the age of 21. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from the public right-of-way.
- C. Cultivation shall be limited to a total of six (6) plants, whether immature or mature within or upon the grounds of the Private Residence, regardless of how many persons reside at the Private Residence.

- D. Any lighting, plumbing or electrical components used for Cultivation shall comply with all applicable State and local laws, including, but not limited to, those relating to land conversion, current building and fire standards, grading, electricity usage, water usage, water quality, woodland riparian habitat protection, stormwater and agricultural discharges. Lighting shall not exceed 1,000 watts per light. The use of Volatile Solvents, as that term is defined under Chapter 5.54 of this Code, for Cannabis Cultivation is prohibited. Any Private Residence or fully enclosed and secure structure used for Cultivation must have proper ventilation and shall not create a humidity or mold problem in violation of this Code or any other applicable State or local health and safety regulations.
- E. Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the Cultivation produces light, glare, heat, noise, odor or vibration that is or whose effect is detrimental to the public health, safety or welfare, or that interferes with the reasonable enjoyment of life and property.
- F. Any Private Residence where Cultivation occurs shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress.
- G. A portable, fully charged fire extinguisher that complies with the regulations and standards adopted by the State Fire Marshal and all applicable laws shall be kept in every room, space or area where Cultivation occurs.

CHAPTER 20.600 DEFINITIONS

Section 20.600.030 "A" Definitions

Agricultural/Horticultural (land use). The growing of any horticulture or agricultural of crops, or the raising of animals, as further defined below in conjunction with a residential or agricultural use, subject to the regulations of the applicable Zone and chapters 20.210 (Agricultural Zones) and 20.415 (Animals). Does not include ~~marijuana cultivation~~ Commercial Cannabis Activity or Cannabis Cultivation, Outdoor, which ~~is a~~ are prohibited uses under Section 20.205.030(D) of this Zoning Ordinance.

1. Non-Commercial. This includes the raising of vegetables, flowers, fruit trees, nut trees, vines and ornamentals, and shrubs. Raising of animals is not permitted within this land use.
2. Commercial. This includes commercial and wholesale greenhouses and nurseries for the production of vines, trees, and other horticultural stock.
3. Processing and Packaging. The on-site processing and packing of any horticulture or agricultural of crops, including animals, in conjunction with an agricultural use, subject to the regulations of the applicable Zone, chapters 20.210 (Agricultural Zones) and 20.415 (Animals), and the conditions of the required CUP.
4. Plans and Crops Wholesale Production. Includes the raising of vegetables, flowers, fruit trees, nut trees, vines and ornamentals, and shrubs for wholesale distribution on a residential lot.

Section 20.600.050 "C" Definitions

Cannabis. Cannabis shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis" shall also include all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds of the plant; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Cannabis" shall also include the separated resin, whether crude or purified, obtained from cannabis. Whenever the term "Cannabis" is used throughout this Code, the term may include Medicinal Cannabis and/or Non-Medicinal Cannabis.

"Cannabis" shall not include either of the following:

1. "Industrial hemp" as defined by California Health and Safety Code Section 11018.5; or
2. The weight of any other ingredient combined with Cannabis to prepare topical or oral administrations, food, drink or other product.

Cannabis Cultivation, Indoor (land use). Cannabis Cultivation, Indoor (land use) shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Cultivation, Indoor (land use)" shall also include the planting, growing, harvesting, drying, cleaning, curing, grading, trimming, packing, storing or handling of Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products, and any and all associated business and/or operational uses and activities that occur to the extent permitted by State law and in compliance with Section 20.400.045 of this Zoning Ordinance.

Cannabis Cultivation, Outdoor (land use). Cannabis Cultivation, Outdoor (land use) shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Cultivation, Outdoor (land use)" shall also include the planting, growing, harvesting, drying, cleaning, curing, grading, trimming, packing, storing or handling of Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products, and any and all associated business and/or operational uses and activities that occur at any location that is not within a fully enclosed and secure structure. Cannabis Cultivation, Outdoor is a prohibited use under Section 20.205.030(D) of this Zoning Ordinance.

Cannabis Products. Cannabis Products shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Products" shall also include

Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or an edible or topical product containing Cannabis or concentrated Cannabis and other ingredients. Whenever the term "Cannabis Products" is used throughout this Code, the term may include Medicinal Cannabis and/or Non-Medicinal Cannabis Products.

Commercial Cannabis Activity (land use). Commercial Cannabis Activity (land use) shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Commercial Cannabis Activity (land use)" shall also include the operation of a Dispensary, and the commercial Cultivation, possession, Manufacture, distribution, Processing, storing, Laboratory Testing, packaging, labeling, Transportation, Delivery or retail, wholesale or other sale of Cannabis and/or Cannabis Products, as those terms are defined under Chapter 5.54 of this Code or State law if not expressly defined under Chapter 5.54 of this Code, and any and all associated business and/or operational uses and activities. Commercial Cannabis Activity includes operations, activities and uses that are for profit and/or not for profit.

Section 20.600.150 "M" Definitions

~~**Marijuana cultivation (land use).** The planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business and/or operational activities.~~

Section 20.600.200 "R" Definitions

Research & Development (land use). Any business combining activities, laboratories, and facilities for research; and uses involving the production of experimental products that neither constitute nor cause a public health risk to employees and/or to surrounding properties and/or residents. Does not include Commercial Cannabis Activity or Cannabis Cultivation, Outdoor, which are prohibited uses under Section 20.205.030(D).

Attachment C

Reference Only

City Council Resolution and Ordinance Amending SMMC Title 5

AGENDA ITEM
2

ORDINANCE NO. 2017 - 1453

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, AMENDING SAN MARCOS MUNICIPAL CODE CHAPTER 5.54 AND TITLE 20 TO ADDRESS CANNABIS OPERATIONS, USES AND ACTIVITIES IN THE CITY OF SAN MARCOS

WHEREAS, in 1970, Congress passed the Federal Controlled Substances Act (CSA), which prohibits the possession, cultivation, manufacture and distribution of marijuana, and classifies it as a Schedule 1 drug meaning it has no accepted medicinal value in treatment; and

WHEREAS, in 1996, California voters approved Proposition 215, entitled the Compassionate Use Act (CUA) (California Health and Safety (H&S) Code sections 11362.5, et seq.), to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The CUA also exempts patients and their primary caregivers from criminal prosecution or sanctions under State law; and

WHEREAS, in 2003, the California Legislature passed Senate Bill 420 to create the Medical Marijuana Program (MMPA) (H&S Code sections 11362.7, et seq.), which established a voluntary State-authorized program for the issuance of medical marijuana identification cards to qualified patients and their primary caregivers, set limits on the amount of medical marijuana any individual could possess, and provided an exemption from State criminal liability for persons "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes"; and

WHEREAS, the United States Supreme Court has continuously found that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no "medical necessity" defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may decide to continue to enforce Federal drug laws against Californians who cultivate, use or dispense marijuana; and

WHEREAS, in 2006, the City Council of the City of San Marcos (City) enacted Chapter 5.54 under the San Marcos Municipal Code (SMMC) to prohibit the establishment of medical marijuana dispensaries as businesses, whether fixed or mobile, in all zones within the City's jurisdictional limits.

WHEREAS, in 2015, the Governor of California approved the Medical Marijuana Regulation and Safety Act (MMRSA), to create a comprehensive State licensing system for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills (AB) 243 and 266 and Senate Bill (SB) 643; and

WHEREAS, in January and February 2016, the City Council amended SMMC Chapter 5.54 and Title 20 of the SMMC (Zoning Ordinance), respectively, to expressly and separately prohibit the commercial cultivation of marijuana, the delivery of marijuana, and the processing of marijuana within the City as business operations, activities and land uses; and

WHEREAS, on October 25, 2016, in anticipation that Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) may be approved imminently by California voters, the City Council adopted an urgency ordinance pursuant to California Government Code Section 65858, which imposed a temporary moratorium on the establishment of marijuana dispensaries, the outdoor cultivation and processing of marijuana, the indoor cultivation and processing of marijuana in excess of what is permitted under the AUMA, and the use and possession of marijuana and marijuana products in public places, places where smoking is prohibited under the SMMC and otherwise, and on City property; and

WHEREAS, on November 8, 2016, California voters approved the AUMA, which took effect on November 9, 2016, to allow persons 21 years of age and older to (i) smoke, ingest or otherwise use non-medical marijuana and marijuana products; (ii) purchase, possess, transport, obtain or give away without compensation to persons age 21 and older, up to 28.5 grams of marijuana or 8 grams of concentrated marijuana; and (iii) plant, cultivate or process up to six (6) living marijuana plants for personal use; and

WHEREAS, on November 15, 2016, the City Council adopted an urgency ordinance to extend the temporary moratorium for a period of ten (10) months and fifteen (15) days to allow the City additional time to study the potential impacts that marijuana operations, activities and uses may have on the public health, safety and welfare as a result of the approval of the AUMA; research and craft appropriate

regulations and possible amendments to the provisions of the SMMC and Zoning Ordinance governing marijuana dispensaries, the cultivation and processing of marijuana indoors and outdoors, and the use and possession of marijuana and marijuana products in public places; and to ensure that regulations relating to marijuana operations, activities and uses can be implemented in such a way as to minimize any harmful effects they might have on the City's residents, as well as nearby businesses and property owners; and

WHEREAS, on June 27, 2017, the Governor of California signed into law Senate Bill 94, a budget trailer bill known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which took effect immediately to create a single State regulatory system for medicinal and non-medicinal commercial cannabis businesses. The MAUCRSA repealed the MMRSA adopted in 2015, and incorporated certain provisions from the MMRSA into the licensing provisions of the AUMA to create one consolidated act known as the MAUCRSA; and

WHEREAS, on August 8, 2017, the City Council adopted an urgency ordinance to extend the temporary moratorium for a final period of one (1) year through September 30, 2018, to provide additional time for the City to further study the issues surrounding medicinal and non-medicinal cannabis operations, activities and uses following the approval of the MAUCRSA, as well as to modify certain provisions under the SMMC to bring it into conformance with the latest laws, and consider provisions not previously contemplated or expressly identified by the City following the adoption of the MAUCRSA to regulate or prohibit certain operations, activities and uses of the cannabis industry, as desired; and

WHEREAS, the MAUCRSA allows local governments to continue prohibiting or regulating commercial operations, activities and uses relating to cannabis, including, but not limited to, adopting and enforcing zoning and land use requirements and other local regulations prohibiting medicinal and non-medicinal cannabis businesses, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery and retail sale of cannabis and cannabis products; enacting and enforcing reasonable regulations relating to the personal cultivation of cannabis indoors, and prohibiting the personal cultivation of cannabis outdoors; and prohibiting the possession, smoking and ingestion of cannabis and cannabis products in public places, places where smoking is prohibited under the SMMC and otherwise, and within buildings owned, leased or occupied by a State or local government agency, among other places; and

WHEREAS, local agencies that have permitted medicinal or non-medicinal cannabis dispensaries to operate in their jurisdictions, in California and nationally, have reported experiencing an overconcentration of such land uses; armed burglaries, robberies and thefts occurring at the dispensaries; an increase in other criminal activity in the vicinity of these dispensaries; persons under 21 years of age, drug addicts and documented gang members loitering at and around the dispensaries; dispensary customers using cannabis and then driving under the influence of cannabis; dispensaries selling illegal drugs other than cannabis; dispensaries selling cannabis and cannabis products to persons under 21 years of age; loss of trade for commercial businesses located near dispensaries; excessive energy use; and faulty and dangerous electrical and plumbing problems at the dispensaries; and

WHEREAS, many of the violent crimes reported at cannabis dispensaries involve the use of weapons. Since the passage of the AUMA in November 2016, a number of armed robberies have been reported at cannabis dispensaries throughout the State, including, but not limited to, at dispensaries in Chula Vista (9/27/17), in which a dispensary security guard's gun was stolen by the robbers; Los Angeles (9/18/17); San Diego (9/9/17), in which a dispensary employee was pistol whipped in the head; Santa Rosa (8/21/17); Spring Valley (8/10/17); South Los Angeles (7/20/17), in which at least four people were shot, including a dispensary security guard who was killed; Inglewood (7/19/17), in which a person was shot and killed; Modesto (7/13/17); Berkeley (6/25/17); Encanto (6/10/17), in which a dispensary employee was tied up during the robbery; Spring Valley (6/6/17); Los Angeles (5/11/17), in which a dispensary security guard shot the robber; Perris (5/1/17); Cathedral City (4/26/17); Anaheim (3/27/17), which also caused the Anaheim Police Department to put a lockdown on nearby schools after the suspects fled and could not be found; Bakersfield (2/16/17); Chatsworth (2/11/17), in which a dispensary employee was shot and the dispensary security guard detained by the robbers; Mar Valley (1/18/17), in which an armed robber was shot and killed by a dispensary security guard; and South Los Angeles (11/23/16), in which a dispensary security guard was shot; and

WHEREAS, on April 29, 2017, employees at an unlicensed cannabis dispensary illegally operating in San Marcos were robbed at gunpoint. The robbery was reported by a witness outside of the dispensary who reported suspicious activity at the dispensary, rather than by the employees of the dispensary; and

WHEREAS, on June 29, 2017, a shooting at a cannabis dispensary in Chula Vista resulted in the shooting victim having to undergo surgery. Following the shooting, a neighboring business owner stated he is concerned about how the dispensary may impact his business and is fearful that he will lose customers because of the dispensary. As a result of the police investigation into the shooting, the neighboring business owner was forced to reschedule a dozen appointments as police taped off the parking lot to collect evidence; and

WHEREAS, several jurisdictions throughout the State have reported adverse effects and nuisance impacts relating to cannabis cultivation, including but not limited to, the strong and potentially noxious odors associated with mature cannabis plants; impacts to the environment, including spraying of chemicals and toxins (i.e. fertilizers, pesticides, herbicides, rodenticides and insecticides) at grow sites and the potential for storm water runoff and groundwater impacts, greenhouse gas emissions, excessive energy use, generator use producing localized noise, irresponsible and significant water use (the California Department of Fish & Wildlife reported that researchers estimate each plant of cannabis consumes six gallons of water each day, which is problematic since California public agencies stress the importance of continued water conservation measures given the recent drought, the lingering effects of the drought, and the potential for future droughts), and dangerous fire hazards; problems associated with mold, fungus and pests; abandonment of trash and waste once plants are harvested; proximity of children to areas under cultivation; visibility of grows from the public right-of-way; and an increase in crime, including robberies, theft and trespassing; and

WHEREAS, on September 27, 2016, in the Bronx neighborhood of New York, a battalion fire chief was killed, and twenty others were injured, including nine firefighters, six police officers, three gas utility workers, and two civilians, when a cannabis-growing operation inside a home exploded; and

WHEREAS, more recently, since the passage of the AUMA in November 2016, there has also been a number of fires and explosions reported at residences and businesses throughout the State as a result of illegal cannabis-growing operations, including an explosion at an apartment building in Carlsbad in November 2016, which was caused by a chemical marijuana extraction process. The explosion caused a fire and blew out all of the windows in the unit. Additionally, in April 2017, approximately 400 marijuana plants were discovered in a commercial building in Garden Grove following an electrical fire caused by an overloaded electrical circuit. According to the Garden Grove Police Department, overloading an electrical circuit is commonly done to

fuel high-intensity ultra violet lights needed to grow marijuana plants, which results in fire hazards. More recently, in September 2017, an explosion at an illegal cannabis extraction laboratory in Mendocino County resulted in a large hole in the roof of the building after an unknown object shot through the ceiling; and

WHEREAS, there have also been a number of crimes reported in California involving cannabis delivery services since the passage of the AUMA, several of which have taken place in San Diego County jurisdictions, including, but not limited to, armed robberies of marijuana delivery drivers in La Mesa (6/16/17); Murrieta (3/15/17); Point Loma (2/21/17); Cathedral City (2/6/17); and Carlsbad (2/17); and

WHEREAS, while the City currently prohibits medical marijuana dispensaries, whether fixed or mobile, in all zones within the City's jurisdictional limits under SMMC Chapter 5.54, it does not expressly prohibit non-medicinal cannabis dispensaries; and

WHEREAS, while the City currently prohibits all cultivation and processing of marijuana as a business activity under SMMC Chapter 5.54 and as a land use under the Zoning Ordinance, following the approval of the AUMA and the adoption of the MAUCRSA, the City must permit the limited personal cultivation of cannabis indoors in compliance with State law, but may impose certain regulations on such indoor cultivation in compliance with State law. The City does not currently regulate the personal cultivation of cannabis indoors; and

WHEREAS, while the City currently prohibits smoking in certain public places, it does not expressly prohibit the possession, smoking and ingestion of cannabis and cannabis products in public places, including in places where smoking is prohibited under the SMMC and otherwise, and within buildings owned, leased or occupied by the City, among other places and;

WHEREAS, the City desires to adopt permanent, express regulations prohibiting commercial cannabis operations, uses and activities, including, but not limited to all medicinal and non-medicinal commercial cannabis activities, such as the operation of dispensaries, cooperatives, collectives, microbusinesses or similar establishments where medicinal or non-medicinal cannabis and/or medicinal or non-medicinal cannabis products are sold, and the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or retail, wholesale or other form of sale of medicinal or non-medicinal cannabis and/or medicinal or non-medicinal cannabis products, and any and all associated

business and/or operational activities and uses, as well as the outdoor cultivation of cannabis, the indoor cultivation of cannabis in excess of what is permitted under the MAUCRSA, and the use and possession of cannabis and cannabis products in public places, places where smoking is prohibited under the SMMC and otherwise, and within buildings owned, leased or occupied by the City, among other places. Adopting permanent, express regulations prohibiting commercial cannabis operations, activities and uses following the approval of the AUMA and adoption of the MAUCRSA is necessary to protect and preserve the public health, safety and welfare of the community, and to prevent adverse impacts that such cannabis operations, activities and uses may have on nearby properties and residents; and

WHEREAS, on October 9, 2017, the San Marcos Planning Commission held a duly noticed public hearing to consider and adopt a resolution recommending that the City Council adopt this Ordinance to amend various provisions of the Zoning Ordinance regulating cannabis operations, uses and activities; and further recommending that the City Council approve the Negative Declaration (ND 17-006); and

WHEREAS, the City Council considered the Negative Declaration (ND 17-006) and any public comments for the subject request pursuant to the California Environmental Quality Act (CEQA).

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The existing San Marcos Municipal Code Chapter 5.54 and certain provisions under Title 20 of the San Marcos Municipal Code (Zoning Ordinance) are hereby amended to read as shown in redlined, underlined additions and strikeouts, in the attached Exhibit A.

Section 3. The Negative Declaration (ND 17-006) is hereby approved.

Section 4. The City Clerk shall provide to the State Bureau of Cannabis Control within the Department of Consumer Affairs a copy of the Ordinance, and is hereby designated as the City representative to communicate with State licensing authorities regarding the prohibition on commercial cannabis activity within the

jurisdiction of the City of San Marcos.

Section 5. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following the adoption of this Ordinance, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by State law.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 24th day of October, 2017; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the ____ day of November, 2017, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

James M. Desmond, Mayor

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk

Helen Holmes Peak, City Attorney

ATTACHMENT:

EXHIBIT A: Amended SMMC Chapter 5.54 and Title 20 Regulations

CHAPTER 5.54

CANNABIS (MARIJUANA)

SECTIONS:

<u>5.54.010</u>	<u>Purpose and Intent</u>
<u>5.54.020</u>	<u>Definitions</u>
<u>5.54.030</u>	<u>~~Medical Marijuana Dispensaries as a Prohibited~~ <u>Cannabis Operations, Uses and/or Activity Activities</u></u>
<u>5.54.040</u>	<u>Permissive Zoning</u>
<u>5.54.050</u>	<u>~~Cultivation of Marijuana as a Prohibited Use and/or Activity~~ <u>Public Nuisance</u></u>
<u>5.54.060</u>	<u>~~Delivery of Marijuana as a Prohibited Use and/or Activity~~ <u>Violations and Penalties – Enforcement</u></u>

5.54.010 Purpose and Intent. It is the intent of this Chapter to protect and preserve the public health, safety and welfare of the City and its residents and businesses. Possession, sale and distribution of medicinal and non-medicinal cannabis remain prohibited by Federal law under the Controlled Substances Act. The purpose of this Chapter is to expressly prohibit commercial cannabis activities, cannabis deliveries and the outdoor cultivation of cannabis from occurring in any zone within the jurisdictional limits of the City of San Marcos to the fullest extent authorized by State law, as well as to prohibit the use and possession of cannabis and cannabis products in public places, and to reasonably regulate the personal, indoor cultivation of cannabis consistent with State law, among other operations, uses and activities. The City Council's prohibition and/or regulation of such operations, uses and activities is within the authority conferred upon the City by State law and is an exercise of the City Council's police powers to enact and enforce regulations for the public benefit, safety and welfare of the City.

5.54.010 5.54.020 Definitions. For purposes of this Chapter, the following terms and phrases shall have the meaning as defined in this Section. Whenever any word or phrase used in this Chapter is not defined herein, but is defined under State law, the definition set forth in State law is incorporated into this Chapter as though fully set forth herein.

(a) "Cannabis" or "Marijuana" shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis" shall also include all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds of the plant; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Cannabis" shall also include the separated resin, whether crude or purified, obtained from cannabis. Whenever the term "Cannabis" is used throughout this Code, the term may include Medicinal Cannabis and/or Non-Medicinal Cannabis.

"Cannabis" shall not include either of the following:

- (1) "Industrial hemp" as defined by California Health and Safety Code Section 11018.5; or

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

(b) “Cannabis Accessories” shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Cannabis Accessories” shall also include any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, Processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, using, vaporizing, or containing Cannabis for ingesting, inhaling, or otherwise introducing Cannabis or Cannabis Products into the human body.

(c) “Cannabis Products” shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Cannabis Products” shall also include Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or an edible or topical product containing Cannabis or concentrated Cannabis and other ingredients. Whenever the term “Cannabis Products” is used throughout this Code, the term may include Medicinal Cannabis Products and/or Non-Medicinal Cannabis Products.

(d) “Commercial Cannabis Activity” shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Commercial Cannabis Activity” shall also include the operation of a Dispensary, and the commercial Cultivation, possession, Manufacture, distribution, Processing, storing, Laboratory Testing, packaging, labeling, Transportation, Delivery or retail, wholesale or other sale of Cannabis and/or Cannabis Products, and any and all associated business and/or operational activities and uses. Commercial Cannabis Activity includes operations, activities and uses that are for profit and/or not for profit.

~~(be) “Marijuana Cultivation” or “Cultivation” means~~ shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Cultivation” shall also include the planting, growing, harvesting, drying, cleaning, curing, grading, trimming, packing, storing, handling or Processing of ~~marijuana~~ Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products ~~plants or any part thereof~~, and any and all associated business and/or operational activities and uses.

~~(df) “Marijuana Delivery” or “Delivery”~~ shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Delivery” shall also include the commercial delivery, transfer or transport of Cannabis or Cannabis Products, ~~or arranging for the delivery, transfer or transport, or the use by a State-licensed retailer~~ of any technology platform to arrange for ~~or~~

~~facilities the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products Cannabis or Cannabis Products, to or from any location within the jurisdictional limits of the City of San Marcos, and any and all associated business and/or operational activities and uses. "Delivery" shall not include the Transportation of Cannabis or Cannabis Products on public roads by a State-licensed retailer, microbusiness or nonprofit licensed under California Business and Professions Code section 26070.5, when transporting Cannabis or Cannabis Products in compliance with State law and when the Delivery originates from and terminates in a location outside the City.~~

~~(ag) "Medical Marijuana Dispensary" or "Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana Cannabis and/or Cannabis Products are sold, distributed or made available, to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et. seq. For purposes of this Chapter, the terms "clinic", "cooperative", "collective", "cannabis establishment", "microbusiness" or any other establishments where Cannabis and/or Cannabis Products are sold shall have the same meaning as the term "Dispensary" defined by this Section. A "medical marijuana dispensary" Dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life- threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq., and the San Marcos Municipal Code, including but not limited to, the City's Zoning Code. provisions of the Zoning Ordinance contained in Title 20 of this Code.~~

~~(h) "Indoor" shall mean a Private Residence located within a fully enclosed and secure structure.~~

~~(i) "Laboratory Testing" or "Testing Laboratory" shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Laboratory Testing" shall also include a laboratory, facility or entity in the State that offers or performs tests of Cannabis and/or Cannabis Products and that is both of the following: (i) accredited by an accrediting body that is independent from all other persons involved in Commercial Cannabis Activity in the State; and (ii) licensed by the State Bureau of Cannabis Control within the Department of Consumer Affairs.~~

~~(j) "Manufacture" shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Manufacture" shall also include the compounding, blending, extracting, infusing, or otherwise making or preparation of Cannabis Products, and any and all associated business and/or operational activities and uses.~~

(k) “Medicinal Cannabis” or “Medicinal Cannabis Products” shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Medicinal Cannabis” or “Medicinal Cannabis Products” shall also include Cannabis or Cannabis Products, respectively, intended to be sold for medical use to a Medicinal Cannabis patient with a valid physician's recommendation and/or a Medicinal Cannabis patient's primary caregiver, as that term is defined in the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et. seq.).

(l) “Non-Medicinal Cannabis” or “Non-Medicinal Cannabis Products” shall mean Cannabis or Cannabis Products, respectively, intended to be sold for non-medicinal use by an adult 21 years of age or older pursuant to State law.

(m) “Outdoor” shall mean any location that is not within a fully enclosed and secure structure.

(n) “Public Place” shall mean any area to which the public is invited or in which the public is permitted, including but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities and public transportation facilities. Public Place shall also include all buildings owned, leased or occupied by the City and all City facilities, grounds, trails and/or parks and recreational areas, whether or not enclosed. A private residence is not a Public Place.

(o) “Private Residence” shall mean a house, apartment unit, mobile home or other similar dwelling, and includes any accessory structure that is fully enclosed, secure and located upon the grounds of the Private Residence.

(dp) “Marijuana Processing” or “Processing” means any method used to prepare marijuana, marijuana edibles and/or marijuana byproducts Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products for commercial retail and/or wholesale sales, including, but not limited to, cleaning, curing, preparation, Laboratory Testing, Manufacturing, packaging, and extraction of active ingredients to create marijuana-related products Cannabis Products and concentrates.

(g) “Transportation” shall mean to transport for sale. “Transportation” shall not include the Transportation of Cannabis or Cannabis Products on public roads by a State-licensed retailer, microbusiness or nonprofit licensed under California Business and Professions Code section 26070.5, when transporting Cannabis or Cannabis Products in compliance with State law and when the Transportation originates from and terminates in a location outside the City.

(r) “Volatile Solvent” shall have the same meaning as the definition set forth in California Health and Safety Code Section 11362.3, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term “Volatile Solvent” shall also include a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures, and volatile organic compounds, including (i) explosive gases, such as Butane,

Propane, Xylene, Styrene Gasoline, Kerosene, O2 or H2; and (ii) dangerous poisons, toxins or carcinogens, such as Methanol, Iso-propyl, Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.

5.54.020030 Medical Marijuana Dispensaries as a Prohibited Cannabis Operations, Uses and/or Activities.

(a) Cannabis Operations, Uses and/or Activities Requiring a State License. Any Cannabis operation, use and/or activity for which a State license is required under California Business and Professions Code section 26050, as that Section may be amended from time to time, is prohibited in all zones within the City's jurisdictional limits. No permit, license or other entitlement or authorization, whether conditional or otherwise, shall be issued for the establishment of any such operation, use and/or activity.

(b) Commercial Cannabis Activity. Commercial Cannabis Activity, A medical marijuana dispensary as defined in Section 5.54.040020, and any and all associated business and/or operational activities and uses, is prohibited in all zones within the City's jurisdictional limits. No person shall establish, operate, maintain, conduct or allow any Commercial Cannabis Activity anywhere within the City. No permit, license or other entitlement or authorization, whether conditional or otherwise, shall be issued for the establishment of such use.

(c) Property Owners. A property owner shall not rent, lease or otherwise permit any business that engages in any Commercial Cannabis Activity to occupy real property and/or any improvements thereon in the City. A property owner shall not allow any person or business to establish, operate, maintain, conduct or engage in Commercial Cannabis Activity on any real property owned or controlled by that property owner within the City.

(d) 5.54.030 Delivery of Marijuana as a Prohibited Use and/or Activity. Deliveries. To the extent not already prohibited by Subdivision (b) of this Section, Marijuana Cannabis Delivery, as defined in Section 5.54.020, by any person or entity, including, but not limited to, ~~d~~Dispensaries, and any and all associated business and/or operational activities and uses, is prohibited in all zones within the City's jurisdictional limits. No permit, license or other entitlement or authorization, whether conditional or otherwise, shall be issued for the establishment of such operation, use and/or activity. ~~Any Delivery that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance.~~ Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Delivery operation, use and/or activity that is otherwise prohibited under California law.

(e) Transportation. To the extent not already prohibited by Subdivision (b) of this Section, cannabis Transportation, as defined in Section 5.54.020, by any person or entity, including, but not limited to, Dispensaries, and any and all associated business and/or operational activities and uses, is prohibited in all zones within the City's jurisdictional limits. No permit, license or other entitlement or authorization, whether conditional or otherwise, shall be issued for the establishment of such operation, use and/or activity. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Transportation operation, use and/or activity that is otherwise prohibited under California law.

5.54.040 Cultivation of Marijuana as a Prohibited Use and/or Activity.

(f) Outdoor Cultivation. Outdoor Cultivation by any person or entity, including, but not limited to, ~~clinics, collectives, cooperatives and dispensaries,~~ Dispensaries and any and all associated business and/or operational activities and uses, is prohibited in all zones within the City's jurisdictional limits. No permit, license, or other entitlement or authorization whether conditional or otherwise, shall be issued for the establishment of such operation, use and/or activity. ~~Any Cultivation that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance.~~ Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Outdoor Cultivation operation, use and/or activity that is otherwise prohibited under California law. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Outdoor Cultivation by its tenants.

(g) Indoor Cultivation. The prohibition under subsection (b) of this Section shall not prohibit the Indoor Cultivation of six (6) or fewer living Cannabis plants, which shall be permitted only within a single Private Residence, to the extent such Cultivation is permitted by State law and complies with the requirements set forth below:

(1) Cultivation is permitted only within fully enclosed and secure structures within or upon the grounds of the Private Residence that are inaccessible to persons under the age of 21. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from the public right-of-way.

(2) Cultivation shall be limited to a total of six (6) plants within or upon the grounds of the Private Residence, whether immature or mature, per Private Residence, regardless of how many persons reside at the Private Residence.

(3) Any lighting, plumbing or electrical components used for Cultivation shall comply with all applicable State and local laws, including, but not limited to, those relating to land conversion, current building and fire standards, grading, electricity usage, water usage, water quality, woodland riparian habitat protection, stormwater and agricultural discharges. Lighting shall not exceed 1,000 watts per light. The use of Volatile Solvents for Cannabis Cultivation is prohibited. Any Private Residence or fully enclosed and secure structure used for Cultivation must have proper ventilation and shall not create a humidity or mold problem in violation of this Code or any other applicable State or local health and safety regulations.

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

(5) Any Private Residence where Cultivation occurs shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress.

(6) A portable, fully charged fire extinguisher that complies with the regulations and standards adopted by the State Fire Marshal and all applicable laws shall be kept in every room, space or area where Cultivation occurs.

~~**5.54.060 Processing of Marijuana as a Prohibited Use and/or Activity.** Marijuana Processing by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City's jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Processing that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Processing by its tenants.~~

(h) Use and Possession of Cannabis and Cannabis Products in Public Places. No person shall smoke, ingest, inhale, vaporize or otherwise use or introduce Cannabis or Cannabis Products into the human body, or possess Cannabis or Cannabis Products, in, on or within any of the following locations:

- (1) Any Public Place as defined by Section 5.54.020 of this Chapter;
- (2) Any location where smoking tobacco is prohibited under Chapter 8.80 of this Code or under any other State or local laws;
- (3) Any location where access to the area is open to persons 21 year of age and under;
- (4) Any location where the sale or consumption of alcohol or tobacco is allowed on the premises, except in or upon the grounds of a Private Residence in compliance with this Section;
- (5) Upon the grounds of a school, day care center or youth center, as those terms are defined under California Health and Safety Code Sections 11362.768 and 11363.3, while children are present;
- (6) Within 1,000 feet of a school, day care center or youth center, as those terms are defined under California Health and Safety Code Sections 11362.768 and 11363.3, while children are present at the school, day care center or youth center, except in or upon the grounds of a Private Residence and only if such use is not detectable by others on the grounds of the school, day care center or youth center while children are present;
- (7) While driving or operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation; and
- (8) While riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(i) Sale of Cannabis Accessories. No person or entity, including, but not limited to, Dispensaries, shall sell or permit to be sold any Cannabis Accessories, or violate any other local, state or federal law regulating Drug Paraphernalia, including, but not limited to, California Health and Safety Code Section 11362.3, as that Section may be amended from time to time.

5.54.040 Permissive Zoning. Nothing in this Chapter shall be interpreted to the effect that the City's permissive zoning regulations, which prohibit any use unless expressly permitted and which are located in Title 20 of this Code, allows any other use not specifically listed therein.

5.54.050 Public Nuisance. Any operation, use and/or activity that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared to be a public nuisance subject to abatement by the City. Each and every day a violation of any provision of this Chapter exists constitutes a separate and distinct violation.

5.54.060 Violations and Penalties – Enforcement.

(a) Any person who knowingly or willfully violates any provision of this Chapter is guilty of a misdemeanor, which shall be punishable in accordance with Section 1.12.020 of this Code.

(b) In addition to any other remedies provided in this Code, any violation of this Chapter may be enforced by a civil action brought by the City pursuant to Section 1.12.020 of this Code. The City is entitled to recover attorneys' fees and any and all costs of suit, including, but not limited to, witness fees, in any such civil action.

CHAPTER 20.205 LAND USE AND DEVELOPMENT APPROVAL

Section 20.205.030 General Requirements

D. **Prohibited Uses.** For the purpose of conserving public health, safety, and general welfare, land uses listed in this section are prohibited within any Zone in the City. These uses shall be prohibited outright and not subject to the Director's discretion. The City is a community in the larger North County area and within the San Diego County metropolitan region, which comprises a broader economic area for industry and commerce. The combination of San Diego County's zoning requirements and the zoning requirements of the various cities within the county provide full provision for all types of uses necessary for development. The following land uses and business activities are prohibited in all Zones within the City:

- Automotive wrecking yards
- Hookah retailers or lounges
- Salvage and scrap yards
- Swap meets
- ~~Marijuana cultivation~~
- Commercial Cannabis Activity
- Cannabis Cultivation, Outdoor

CHAPTER 20.400 SPECIFIC USE STANDARDS

Section 20.400.045 Cannabis Cultivation, Indoor

Cannabis Cultivation, Indoor shall be permitted within a single Private Residence in all zones within the jurisdictional limits of the City of San Marcos to the extent such Cultivation is permitted by State law and subject to compliance with the following requirements. For purposes of this Section, the term "Private Residence" shall have the same meaning as the definition set forth in Chapter 5.54 of this Code, as that Section may be amended from time to time, and shall include a house, apartment unit, mobile home or other similar dwelling, and includes any accessory structure that is fully enclosed, secure and located upon the grounds of the Private Residence.

- A. Cultivation is limited to six (6) or fewer living Cannabis plants per Private Residence.
- B. Cultivation is permitted only within fully enclosed and secure structures within or upon the grounds of the Private Residence that are inaccessible to persons under the age of 21. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from the public right-of-way.
- C. Cultivation shall be limited to a total of six (6) plants, whether immature or mature, within or upon the grounds of the Private Residence, regardless of how many persons reside at the Private Residence.
- D. Any lighting, plumbing or electrical components used for Cultivation shall comply with all applicable State and local laws, including, but not limited to, those relating to land

conversion, current building and fire standards, grading, electricity usage, water usage, water quality, woodland riparian habitat protection, stormwater and agricultural discharges. Lighting shall not exceed 1,000 watts per light. The use of Volatile Solvents, as that term is defined under Chapter 5.54 of this Code, for Cannabis Cultivation is prohibited. Any Private Residence or fully enclosed and secure structure used for Cultivation must have proper ventilation and shall not create a humidity or mold problem in violation of this Code or any other applicable State or local health and safety regulations.

- E. Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the Cultivation produces light, glare, heat, noise, odor or vibration that is or whose effect is detrimental to the public health, safety or welfare, or that interferes with the reasonable enjoyment of life and property.
- F. Any Private Residence where Cultivation occurs shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress.
- G. A portable, fully charged fire extinguisher that complies with the regulations and standards adopted by the State Fire Marshal and all applicable laws shall be kept in every room, space or area where Cultivation occurs.

CHAPTER 20.600 DEFINITIONS

Section 20.600.030 "A" Definitions

Agricultural/Horticultural (land use). The growing of any horticulture or agricultural of crops, or the raising of animals, as further defined below in conjunction with a residential or agricultural use, subject to the regulations of the applicable Zone and chapters 20.210 (Agricultural Zones) and 20.415 (Animals). Does not include ~~marijuana cultivation~~ Commercial Cannabis Activity or Cannabis Cultivation, Outdoor, which ~~is a~~ are prohibited uses under Section 20.205.030(D) of this Zoning Ordinance.

1. Non-Commercial. This includes the raising of vegetables, flowers, fruit trees, nut trees, vines and ornamentals, and shrubs. Raising of animals is not permitted within this land use.
2. Commercial. This includes commercial and wholesale greenhouses and nurseries for the production of vines, trees, and other horticultural stock.
3. Processing and Packaging. The on-site processing and packing of any horticulture or agricultural of crops, including animals, in conjunction with an agricultural use, subject to the regulations of the applicable Zone, chapters 20.210 (Agricultural Zones) and 20.415 (Animals), and the conditions of the required CUP.
4. Plans and Crops Wholesale Production. Includes the raising of vegetables, flowers, fruit trees, nut trees, vines and ornamentals, and shrubs for wholesale distribution on a residential lot.

Section 20.600.050 "C" Definitions

Cannabis. Cannabis shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis" shall also include all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds of the plant; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Cannabis" shall also include the separated resin, whether crude or purified, obtained from cannabis. Whenever the term "Cannabis" is used throughout this Code, the term may include Medicinal Cannabis and/or Non-Medicinal Cannabis.

"Cannabis" shall not include either of the following:

1. "Industrial hemp" as defined by California Health and Safety Code Section 11018.5; or
2. The weight of any other ingredient combined with Cannabis to prepare topical or oral administrations, food, drink or other product.

Cannabis Cultivation, Indoor (land use). Cannabis Cultivation, Indoor (land use) shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Cultivation, Indoor (land use)" shall also include the planting, growing, harvesting, drying, cleaning, curing, grading, trimming, packing, storing or handling of Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products, and any and all associated business and/or operational uses and activities that occur to the extent permitted by State law and in compliance with Section 20.400.045 of this Zoning Ordinance.

Cannabis Cultivation, Outdoor (land use). Cannabis Cultivation, Outdoor (land use) shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Cultivation, Outdoor (land use)" shall also include the planting, growing, harvesting, drying, cleaning, curing, grading, trimming, packing, storing or handling of Cannabis, Cannabis Products and/or the byproducts of the Cannabis Products, and any and all associated business and/or operational uses and activities that occur at any location that is not within a fully enclosed and secure structure. Cannabis Cultivation, Outdoor is a prohibited use under Section 20.205.030 of this Zoning Ordinance.

Cannabis Products. Cannabis Products shall have the same meaning as the definition set forth in California Business and Professions Code Section 26001, as that Section may be amended from time to time. Notwithstanding any provisions of Business and Professions Code Section 26001, the term "Cannabis Products" shall also include Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or