

STAFF REPORT

DATE: April 4, 2017

TO: City Council

FROM: Ashley Feeney, Assistant Director Community Development & Sustainability
Cathy Camacho, Planner
Darren Pytel, Police Chief
Harriet Steiner, City Attorney

SUBJECT: Proposed Zoning Amendments Regulating Personal Cultivation of Cannabis

Recommendation

Staff recommends that the City Council hold a public hearing and:

1. Adopt the proposed medical and personal cannabis cultivation Ordinance (Attachment 1) repealing the existing cultivation section of the Municipal Code 40.26.276 (Cannabis Cultivation), and adding a new Article 40.26A (Personal Cultivation of Cannabis) regulating activities related to non-commercial, personal use, indoor and outdoor cannabis cultivation in residential zones, and potential performance standards for indoor and outdoor cultivation.

At the March 21, 2017 meeting, staff presented City Council with a workshop on a draft personal use cultivation ordinance and a commercial cannabis land use matrix. Council directed staff to return on April 4th for a public hearing on the Personal Use Cultivation Ordinance and return to City Council at a future date on the commercial cannabis uses. The subject Ordinance only pertains to cultivation of cannabis for personal and not commercial activities. Should the City Council approve the proposed Personal Use Cultivation Ordinance, the second reading would be scheduled for April 18th with the Ordinance being effective on May 18, 2017.

The proposed timeline for bringing commercial cannabis regulations back to City Council is as follows:

Commercial Cannabis Manufacturing, Testing, R&D, and Distribution Ordinance

- *Planning Commission public hearing and recommendation to Council – May 10, 2017*
- *City Council ordinance introduction and public hearing – May 23, 2017 (proposed meeting date, currently scheduled as an on call meeting)*
- *City Council 2nd reading (if approved) – June 6, 2017*

At the May 23, 2017 City Council meeting, staff will be recommending Council extend the Interim Urgency Ordinance which expires on July 4, 2017, continuing the moratorium on commercial cannabis businesses. This would allow for the Commercial Cannabis Manufacturing, Testing, R&D and Distribution Ordinance to take effect on July 6, 2017. The

remaining commercial cannabis businesses and uses that are not clearly regulated would be prohibited until the earlier of the Council adopting regulations or the expiration of the moratorium on October 31, 2017. This will allow time for staff to further develop an ordinance that addresses retail dispensaries and commercial cultivation for Council consideration.

Fiscal Impact

Costs of processing the personal cultivation ordinance have been absorbed by the existing budgets for Community Development, Police, and the City Manager's Office. Costs associated with responding to potential code enforcement complaints associated with the personal use cultivation ordinance are unknown. Should City Council adopt the proposed personal cultivation ordinance, complaints and responses will be tracked to inform future budget decisions regarding enforcement.

Council Goal (s)

Goal 7 – Ensure a Safe and Healthy Community

- Create and maintain a physical and social environment that promotes safety and well-being.

Summary

In response to City Council direction, staff is bringing forth an ordinance that addresses one component of cannabis related use, specifically non-commercial personal use, and indoor and outdoor cannabis cultivation in residential zones. The Personal Cultivation of Cannabis Ordinance before City Council mirrors the existing Cannabis Cultivation Ordinance (to be repealed) which permits cultivation of cannabis in residential districts indoors only, by a patient or caregiver only, for medical use only. The difference is that the new ordinance would permit both indoor and outdoor cultivation for medical use and personal use. The City Council received a detailed staff report and a presentation of the proposed ordinance at the City Council Cannabis Workshop on March 21, 2017 (the staff report from the March 21st Cannabis Workshop is included as Attachment 4 for reference). City Council instructed staff to bring the Personal Cultivation of Cannabis Ordinance to a public hearing on April 4, 2017.

Personal Cultivation of Cannabis Ordinance

Key points regarding the proposed ordinance include the following:

Indoor Cultivation

- Permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts.
- All indoor personal cultivation, including by a qualified patient or primary caregiver shall occur in a dwelling or fully-enclosed accessory building or structure.
- Structures and equipment used for indoor cultivation, such as indoor grow lights, shall comply with all applicable building, electrical and fire code regulations as adopted by the city.

- The cumulative cultivation area for medical cannabis shall total no more than 50 contiguous square feet per qualified patient, and no larger than 250 contiguous square feet for primary caregivers, regardless of how many qualified patients or primary caregivers reside at the premises. Either a qualified patient or primary caregiver shall reside full-time on the premises where the cannabis cultivation occurs.
- For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons 21 years of age or older. For persons other than qualified patients or primary caregivers, the cumulative total of marijuana plants on the property, indoor and outdoor, shall not exceed 6 cannabis plants, regardless of the number of persons residing on the property.
- Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen or bathrooms.
- No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.
- The ordinance does not preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.
- The ordinance does not authorize commercial cultivation of cannabis.

Outdoor Cultivation

- Permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts.
- Permitted only in a rear or side yard that is entirely enclosed by a solid, opaque fence that is associated with a dwelling or secondary dwelling unit.
- The height of the cannabis plants shall not exceed the standard fence height applicable to the parcel, or 6 feet, whichever is lesser.
- The cannabis plants shall be placed at a minimum setback of 5 feet from the edge of mature canopy to the property line.
- No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.
- For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons 21 years of age or older.
- For non-medical personal cultivation, the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of the number of persons residing on the property.

- For cultivation of medical cannabis by patients and qualified caregivers, the indoor limitations are set forth above. In addition, up to six plants total may be cultivated outdoors, per property.
- The ordinance does not preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.
- The ordinance does not authorize commercial cultivation of cannabis.

Ordinance Modifications since the March 21, 2017 City Council Workshop

At the March 21st Council meeting, there was a request made by a member of the public for the City to use the term cannabis in place of marijuana, as some feel there are negative connotations associated with marijuana. Staff felt this request could be reasonably accommodated and have made changes to the proposed Ordinance accordingly. Another item that was raised was the distance of mature outdoor canopy to property lines being at three feet may be too close and could generate neighbor conflicts over plant odors. Staff reviewed this section and recommend the mature outdoor canopy setback from property lines be increased to five feet consistent with side yard setbacks for structures and accessory structures in most residential zones. The proposed Ordinance has been revised to reflect these changes along with some other minor clarifying edits (see Attachment 2 for redline edits).

The proposed Ordinance is limited to the issue of personal cultivation of cannabis. The Police Department has raised the potential for public safety concerns with outdoor cultivation for personal use. The concerns include plant odors, potential for increased theft through the creation of an attractive nuisance, greater access to minors and increased cannabis visibility in the community. It is important to note that the adoption of the ordinance does not detract in any way from the City Council’s authority to make future amendments or to prohibit all outdoor cultivation, if desired. After adoption, staff will track any complaints received regarding outdoor cultivation and report back to the City Council with data at a future date.

Planning Commission Action

On March 8, 2016 the proposed Personal Use Cultivation Ordinance was reviewed by the Planning Commission. The Commission was asked to make a recommendation to the City Council on the proposed Ordinance. A summary of their action is as follows:

Personal Use Cultivation Ordinance

The Commission unanimously (6-0) voted to recommend to the City Council approval of the draft Ordinance, subject to a minor standard addition:

- Relaxed regulations to allow a small greenhouse/enclosed planter box to be located closer than 3 feet to property lines.

In reviewing Municipal Code Section 40.26.010(d)(6), non-habitable accessory structures that are less than or equal to 120 square feet may be located within the required rear yard and interior side yard setbacks parallel with or behind the front of the primary structure. After reviewing this Municipal Code section, staff does not feel it is necessary to modify the proposed Personal Use Cultivation Ordinance as this is already addressed. There were other minor clarifying edits made to the proposed Ordinance based upon feedback provided at the Planning Commission hearing.

Environmental Determination

Staff finds that the amendments contained in this Ordinance authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping of private residential property, and that this Ordinance does not involve or approve the removal of healthy, mature, scenic trees or other significant alterations to land. The Ordinance merely imposes reasonable regulations on the ability of individuals to cultivate cannabis for personal use on residential properties otherwise authorized by State law, and that this Ordinance further limits individuals' personal outdoor cultivation by total number of plants in order which, based on the limited number of plants will not allow any significant changes to the character or use of the side and rear yards of private residential properties in the City. Accordingly, staff finds this Ordinance is categorically exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15304 of Title 14 of the California Code of Regulations.

Public Noticing

The Public Hearing Notice for the Planning Commission and City Council hearings was published in a one-quarter page notice in the Davis Enterprise.

Additional Resources

Additional resources and information on cannabis, inclusive of links to websites where the MCRSA and AUMA text can be found at the following webpage:

<http://cityofdavis.org/city-hall/community-development-and-sustainability/medical-cannabis-information>

Upon adoption of the ordinance staff will prepare handouts and a link to the City web site to clearly articulate the cultivation regulations and to provide associated links and resources.

Conclusion

Staff recommends that the City Council adopt the attached Personal Cultivation of Cannabis Ordinance provided in Attachment 1.

Attachments

1. Proposed Ordinance
2. Redline Version of Draft Ordinance Presented at the March 21, 2017 Workshop
3. City of Davis Municipal Code 40.26.276, Cannabis Cultivation (to be repealed)
4. Staff Report from the March 21, 2017 City Council Cannabis Workshop -
<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20170321/07-Cannabis-Regulation-Workshop.pdf>

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS REPEALING SECTION 40.26.276, AND ADDING ARTICLE 40.26A OF THE ZONING CODE RELATED TO PERSONAL CULTIVATION OF CANNABIS AND RELATED DEFINITIONS

WHEREAS, the City of Davis Municipal Code currently prohibits medical marijuana dispensaries, commercial cultivation of medical marijuana, and personal outdoor cultivation of medical marijuana in all zoning districts in the City; and

WHEREAS, the City Council of the City of Davis adopted Urgency Ordinance No. 2488 to establish an interim moratorium in all zoning districts on the establishment, creation or expansion of any and all commercial marijuana uses and all outdoor marijuana cultivation; and

WHEREAS, the City Council, by Ordinance No. 2492 extended the moratorium until July 4, 2017 so as to allow City staff to conduct public outreach and develop recommendations regarding commercial marijuana businesses and appropriate regulations; and

WHEREAS, the City Council has determined that certain revisions to the City's Zoning Code regarding indoor and outdoor personal cultivation of marijuana are necessary in light of the Adult Use of Marijuana Act, approved and enacted by the voters at the November 8, 2016 General Election; and

WHEREAS, the City Council has determined that the reasonable regulations regarding personal cultivation contained in this Ordinance balance individuals' rights to cultivate marijuana with the public health and safety concerns of the City posed by cultivation of marijuana; and

WHEREAS, State law uses both the terms "marijuana" and "cannabis" with identical or nearly identical meaning, and therefore the City Council has decided that consistently using the word "cannabis" in the Ordinance is an appropriate revision to the City's Municipal Code in light of social stigma or negative public perception that may be tied to use of the word "marijuana," but that "cannabis" shall mean and include "marijuana" as used and defined in State law; and

WHEREAS, it is the City Council's intent that the moratorium on all commercial marijuana uses, as set forth in Ordinances Nos. 2488 and 2492 shall stay in effect as set forth in the Ordinances, unless or until amended by future action of the City Council.

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

SECTION 1. Recitals. The above recitals are hereby incorporated as though set forth in this section.

SECTION 2. Findings. Pursuant to Article 40.36 of the Davis Municipal Code, the City Council hereby makes the following findings in support of this Ordinance:

- a. A proposed ordinance amending the zoning code regarding personal cultivation of marijuana was brought before a duly noticed public meeting of the Planning Commission on March 8, 2017. The Planning Commission unanimously recommended City Council approval.
- b. The City Council hereby finds, pursuant to Davis Municipal Code section 40.36.070 and based on Planning Commission recommendation, that this Ordinance is in general conformance with the City General Plan. The City Council further finds that the public necessity, convenience and general welfare require the adoption of this Ordinance in order to balance the interests of existing medical cannabis patients and caregivers with the health and safety concerns associated with certain personal cannabis cultivation authorized by State law.
- c. The City Council finds that adoption of this Ordinance preserves and clarifies the City's intended zoning regulations regarding cannabis uses, and is therefore also intended to retain and maintain local land use authority over those uses in light of State law.

SECTION 3. Amendment. Section 40.26.276 of the Davis Municipal Code, titled "Marijuana Cultivation," is hereby repealed in its entirety.

SECTION 4. Amendment. Article 40.26A is hereby added to the Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 5. Moratorium On Commercial Marijuana Uses. Except as amended by this Ordinance regarding the personal cultivation of cannabis, all other provisions of Urgency Ordinance No. 2488, as extended by City Council by Ordinance No. 2492, remain in effect. Nothing in this Ordinance shall be construed to amend or repeal the existing moratorium on the establishment, creation or expansion of any and all commercial marijuana uses.

SECTION 6. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 7. CEQA. The City Council hereby finds that the amendments contained in this Ordinance authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping of private residential property, and that this Ordinance does not involve or approve the removal of healthy, mature, scenic trees or other significant alterations to land. The City Council finds that this Ordinance merely imposes reasonable regulations on the ability of individuals to cultivate marijuana for personal use on residential properties otherwise authorized by State law, and that this Ordinance further limits individuals' personal outdoor cultivation by total number of plants in order which, based on the limited number of plants will not allow any significant changes to the character or use of the side and rear yards of private residential properties in the City. Accordingly, the City Council finds that this Ordinance is categorically exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15304 of Title 14 of the California Code of Regulations.

SECTION 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

INTRODUCED on the _____ day of _____, 2017, and **PASSED AND ADOPTED** by the City Council of the City of Davis on this _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Robb Davis
Mayor of the City of Davis

ATTEST:

Zoe Mirabile, City Clerk

EXHIBIT A

Article 40.26A – Personal Cultivation of Cannabis

- 40.26A.010 – Purpose
- 40.26A.020 – Applicability
- 40.26A.030 – Definitions
- 40.26A.040 – Indoor Personal Cultivation
- 40.26A.050 – Outdoor Personal Cultivation
- 40.26A.060 – Enforcement

40.26A.010 Purpose.

The purpose of this Article is to impose zoning restrictions on the personal cultivation of cannabis pursuant to State law. This Article is not intended to interfere with a patient’s right to use medical cannabis pursuant to the Compassionate Use Act, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by State law. This Article is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding personal cultivation of cannabis in the City pursuant to this Code and State law.

40.26A.020 Applicability.

No part of this Article shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. Nothing in this Article shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. No provision of this Article shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney’s office, the Attorney General of the State of California or the United States of America.

40.26A.030 Definitions.

The following words and phrases shall have the following meanings when used in this Article:

“Cannabis” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including cannabis products derived therefrom. “Cannabis” shall also mean “marijuana” and “marijuana products” as used and defined in State law. For purposes of this Article, “cannabis” shall mean and include both cannabis for medical purposes and non-medical cannabis, unless otherwise specified. Cannabis shall not include industrial hemp.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Personal cultivation” means cultivation of cannabis conducted by an individual strictly for that individual’s personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and State law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended. Personal cultivation also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with State law, including Health and Safety Code sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.

“Primary caregiver” shall have the same definition as set forth in California Health and Safety Code Section 11362.7(d), as may be amended.

“Qualified patient” shall mean a person identified in California Health and Safety Code Section 11362.7(c) or (f), as may be amended.

40.26A.040 Indoor Personal Cultivation.

Indoor Cultivation. Indoor personal cultivation of cannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

- (a) All indoor personal cultivation, including by a qualified patient or primary caregiver, shall occur in a dwelling or fully-enclosed accessory building or structure, as those terms are defined in Section 40.01.010 of this chapter.
- (b) Medical cannabis shall be cultivated by:
 - (1) A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical cannabis to any other person; or
 - (2) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code Section 11362.765(c).
- (c) Structures and equipment used for indoor cultivation, such as indoor grow lights, shall comply with all applicable building, electrical and fire code regulations as adopted by the city.

- (d) All accessory buildings and structures used for indoor cultivation shall comply with the locational and other requirements set forth in Section 40.26.010 of this chapter.
- (e) Indoor personal cultivation of cannabis may occur inside a dwelling and/or an accessory building or structure on the same parcel, subject to the following restrictions:
 - (1) The cumulative cultivation area for medical cannabis shall total no more than fifty contiguous square feet per qualified patient, and no more than two hundred fifty contiguous square feet for primary caregivers, but in no event shall the total cumulative cultivation area for medical cannabis exceed two hundred fifty contiguous square feet regardless of how many qualified patients or primary caregivers reside at the premises. Either a qualified patient or primary caregiver shall reside full-time on the premises where the medical cannabis cultivation occurs.
 - (2) For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons 21 years of age or older. For persons other than qualified patients or primary caregivers, the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of the number of persons residing on the property.
- (f) Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).
- (g) No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.
- (h) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.
- (i) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.
- (j) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.050 Outdoor Personal Cultivation.

Outdoor Cultivation. Outdoor personal cultivation of cannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

- (a) Outdoor personal cultivation of cannabis is only permitted in a rear or side yard that is entirely enclosed by a solid, opaque fence that is associated with a dwelling or secondary dwelling unit.

- (b) The height of the cannabis plants shall not exceed the standard fence height applicable to the parcel, or six (6) feet, whichever is lesser.
- (c) The cannabis plants shall be placed at a minimum setback of five (5) feet from the edge of canopy to the property line.
- (d) No exterior evidence of cannabis cultivation occurring at the property shall be visible from the public right-of-way.
- (e) For persons other than qualified patients or primary caregivers, all outdoor personal cultivation shall be conducted by persons 21 years of age or older, and the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of number of persons residing on the property.
- (f) For qualified patients and primary caregivers, the cumulative total of cannabis plants outside shall not exceed six (6) cannabis plants, regardless of the number of qualified patients and primary caregivers residing on the property.
- (g) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting cannabis cultivation by tenants.
- (h) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.
- (i) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.060 Enforcement.

- (a) **Nuisance.** Any violation of this Article is declared to be a public nuisance and may be abated by the city pursuant to Chapter 23 of this code.
- (b) **Penalty.** A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this Code solely to the extent such conduct or condition is immune from criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5), the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), or the Adult Use of Marijuana Act, as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS REPEALING SECTION 40.26.276, AND ADDING ARTICLE 40.26A OF THE ZONING CODE RELATED TO PERSONAL CULTIVATION OF MARIJUANACANNABIS AND RELATED DEFINITIONS

WHEREAS, the City of Davis Municipal Code currently prohibits medical marijuana dispensaries, commercial cultivation of medical marijuana, and personal outdoor cultivation of medical marijuana in all zoning districts in the City; and

WHEREAS, the City Council of the City of Davis adopted Urgency Ordinance No. 2488 to establish an interim moratorium in all zoning districts on the establishment, creation or expansion of any and all commercial marijuana uses and all outdoor marijuana cultivation; and

WHEREAS, the City Council, by Ordinance No. 2492 extended the moratorium until July 4, 2017 so as to allow City staff to conduct public outreach and develop recommendations regarding commercial marijuana businesses and appropriate regulations; and

WHEREAS, the City Council has determined that certain revisions to the City's Zoning Code regarding indoor and outdoor personal cultivation of marijuana are necessary in light of the Adult Use of Marijuana Act, approved and enacted by the voters at the November 8, 2016 General Election; and

WHEREAS, the City Council has determined that the reasonable regulations regarding personal cultivation contained in this Ordinance balance individuals' rights to cultivate marijuana with the public health and safety concerns of the City posed by cultivation of marijuana; and

WHEREAS, State law uses both the terms "marijuana" and "cannabis" with identical or nearly identical meaning, and therefore the City Council has decided that consistently using the word "cannabis" in the Ordinance is an appropriate revision to the City's Municipal Code in light of social stigma or negative public perception that may be tied to use of the word "marijuana," but that "cannabis" shall mean and include "marijuana" as used and defined in State law; and

WHEREAS, it is the City Council's intent that the moratorium on all -commercial marijuana uses, as set forth in Ordinances Nos. 2488 and 2492 shall stay in effect as set forth in the Ordinances, unless or until amended by future action of the City Council.

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

SECTION 1. Recitals. The above recitals are hereby incorporated as though set forth in this section.

SECTION 2. Findings. Pursuant to Article 40.36 of the Davis Municipal Code, the City Council hereby makes the following findings in support of this Ordinance:

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- a. A proposed ordinance amending the zoning code regarding personal cultivation of marijuana was brought before a duly noticed public meeting of the Planning Commission on March 8, 2017. The Planning Commission unanimously recommended City Council approval.
- b. The City Council hereby finds, pursuant to Davis Municipal Code section 40.36.070 and based on Planning Commission recommendation, that this Ordinance is in general conformance with the City General Plan. The City Council further finds that the public necessity, convenience and general welfare require the adoption of this Ordinance in order to balance the interests of existing medical ~~marijuana-cannabis~~ patients and caregivers with the health and safety concerns associated with ~~commercial-marijuana businesses and~~ certain personal ~~marijuana-cannabis~~ cultivation authorized by State law.
- c. The City Council finds that adoption of this Ordinance preserves and clarifies the City's intended zoning regulations regarding ~~marijuana-cannabis~~ uses, and is therefore also intended to retain and maintain local land use authority over those uses in light of State law ~~and State licensing of commercial marijuana uses.~~

SECTION 3. Amendment. Section 40.26.276 of the Davis Municipal Code, titled "Marijuana Cultivation," is hereby repealed in its entirety.

SECTION 4. Amendment. Article 40.26A is hereby added to the Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 5. Moratorium On Commercial Marijuana Uses. Except as amended by this Ordinance regarding the personal cultivation of ~~marijuanacannabis~~, all other provisions of Urgency Ordinance No. 2488, as extended by City Council by Ordinance No. 2492, remain in effect. Nothing in this Ordinance shall be construed to amend or repeal the existing moratorium on the establishment, creation or expansion of any and all commercial marijuana uses.

SECTION 6. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 7. CEQA. The City Council hereby finds that the amendments contained in this Ordinance authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping of private residential property, and that this Ordinance does not involve or approve the removal of healthy, mature, scenic trees or other significant alterations to land. The City Council finds that this Ordinance merely imposes reasonable regulations on the ability of individuals to cultivate marijuana for personal use on residential properties otherwise authorized by State law, and that this Ordinance further limits individuals' personal outdoor cultivation by total number of plants in order which, based on the limited number of plants will not allow any significant changes to the character or use of the side and rear yards of private residential properties in the City. Accordingly, the City Council finds

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that this Ordinance is categorically exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15304 of Title 14 of the California Code of Regulations.

SECTION 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

INTRODUCED on the _____ day of _____, 2017, and **PASSED AND ADOPTED** by the City Council of the City of Davis on this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Robb Davis
Mayor of the City of Davis

ATTEST:

Zoe Mirabile, City Clerk

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EXHIBIT A

Article 40.26A – Personal Cultivation of MarijuanaCannabis

- 40.26A.010 – Purpose
- 40.26A.020 – Applicability
- 40.26A.030 – Definitions
- 40.26A.040 – Indoor Personal Cultivation
- 40.26A.050 – Outdoor Personal Cultivation
- 40.26A.060 – Enforcement

40.26A.010 Purpose.

The purpose of this Article is to impose zoning restrictions on the personal cultivation of marijuanacannabis pursuant to State law. This Article is not intended to interfere with a patient’s right to use medical marijuanacannabis pursuant to the Compassionate Use Act, as may be amended, nor does it criminalize marijuanacannabis possession or cultivation otherwise authorized by State law. This Article is not intended to give any person or entity independent legal authority to operate a marijuanacannabis business, it is intended simply to impose zoning restrictions regarding personal cultivation of marijuanacannabis in the City pursuant to this Code and State law.

40.26A.020 Applicability.

No part of this Article shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. Nothing in this Article shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of marijuanacannabis that is otherwise illegal under local or state law. No provision of this Article shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney’s office, the Attorney General of the State of California or the United States of America.

40.26A.030 Definitions.

The following words and phrases shall have the following meanings when used in this Article:

“Cannabis” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including cannabis products derived therefrom. “Cannabis” shall also mean “marijuana” and “marijuana products” as used and defined in State law. For purposes of this Article, “cannabis” shall mean and include both cannabis for medical purposes and non-medical cannabis, unless otherwise specified. Cannabis shall not include industrial hemp.

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“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuanacannabis.

~~“Marijuana” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana products derived therefrom. For purposes of this Article, “marijuana” shall mean and include both marijuana for medical purposes and non-medical marijuana, unless otherwise specified. Marijuana shall not include industrial hemp.~~

“Personal cultivation” means cultivation of marijuanacannabis conducted by an individual strictly for that individual’s personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and State law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended. Personal cultivation also means and includes cultivation of medical marijuanacannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with State law, including Health and Safety Code sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of marijuanacannabis.

“Primary caregiver” shall have the same definition as set forth in California Health and Safety Code Section 11362.7(d), as may be amended.

“Qualified patient” shall mean a person identified in California Health and Safety Code Section 11362.7(c) or (f), as may be amended.

40.26A.040 Indoor Personal Cultivation.

Indoor Cultivation. Indoor personal cultivation of marijuanacannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

- (a) All indoor personal cultivation, including by a qualified patient or primary caregiver, shall occur in a dwelling or fully-enclosed accessory building or structure, as those terms are defined in Section 40.01.010 of this chapter.
- (b) Medical marijuanacannabis shall be cultivated by:
 - (1) A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical marijuanacannabis to any other person; or
 - (2) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical marijuanacannabis exclusively for the personal

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medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code Section 11362.765(c).

- (c) Structures and equipment used for indoor cultivation, such as indoor grow lights, shall comply with all applicable building, electrical and fire code regulations as adopted by the city.
- (d) All accessory buildings and structures used for indoor cultivation shall comply with the locational and other requirements set forth in Section 40.26.010 of this chapter.
- (e) Indoor personal cultivation of marijuanacannabis may occur inside a dwelling and/or an accessory building or structure on the same parcel, subject to the following restrictions:
 - (1) The cumulative cultivation area for medical marijuanacannabis shall total no more than fifty contiguous square feet per qualified patient, and no ~~larger more~~ than two hundred fifty contiguous square feet for primary caregivers, but in no event shall the total cumulative cultivation area for medical cannabis exceed two hundred fifty contiguous square feet regardless of how many qualified patients or primary caregivers reside at the premises. Either a qualified patient or primary caregiver shall reside full-time on the premises where the medical marijuanacannabis cultivation occurs.
 - (2) For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons 21 years of age or older. For persons other than qualified patients or primary caregivers, the cumulative total of marijuanacannabis plants on the property, indoor and outdoor, shall not exceed six (6) marijuanacannabis plants, regardless of the number of persons residing on the property.
- (f) Personal cultivation of marijuanacannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).
- (g) No exterior evidence of marijuanacannabis cultivation occurring at the property shall be discernable from the public right-of-way.
- (h) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting personal cultivation of marijuanacannabis by tenants.
- (i) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of marijuanacannabis.
- (j) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.050 Outdoor Personal Cultivation.

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Outdoor Cultivation. Outdoor personal cultivation of marijuanacannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

- (a) Outdoor personal cultivation of marijuanacannabis is only permitted in a rear or side yard that is entirely enclosed by a solid, opaque fence that is associated with a dwelling or secondary dwelling unit.
- (b) The height of the marijuanacannabis plants shall not exceed the standard fence height applicable to the parcel, or six (6) feet, whichever is lesser.
- (c) The marijuanacannabis plants shall be placed at a minimum setback of ~~three-five (53)~~ feet from the edge of canopy to the property line.
- (d) No exterior evidence of marijuanacannabis cultivation occurring at the property shall be visible from the public right-of-way.
- (e) For persons other than qualified patients or primary caregivers, all outdoor personal cultivation shall be conducted by persons 21 years of age or older, and the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of number of persons residing on the property.
- (f) For qualified patients and primary caregivers, The cumulative total of marijuanacannabis plants outside on the property, indoor and outdoor, shall not exceed six (6) marijuanacannabis plants, regardless of the number of persons-qualified patients and primary caregivers residing on the property.
- (g) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting marijuanacannabis cultivation by tenants.
- (h) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of marijuanacannabis.
- (i) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.060 Enforcement.

- (a) **Nuisance.** Any violation of this Article is declared to be a public nuisance and may be abated by the city pursuant to Chapter 23 of this code.
- (b) **Penalty.** A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this Code solely to the extent such conduct or condition is immune from criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5), the Medical Marijuana Program (Health and Safety Code Section

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11362.7 et seq.), or the Adult Use of Marijuana Act, as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.

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City of Davis Municipal Code 40.26.276, Marijuana Cultivation (to be repealed)

40.26.276 Marijuana cultivation.

Marijuana cultivation is prohibited within the city in all zoning districts except as permitted by and in conformance with the provisions of this section.

(a) **Purpose.** The purpose of this section is to regulate the cultivation of marijuana in order to preserve and protect the public health, welfare and safety. This section is not intended to interfere with a patient’s right to medical marijuana, as provided for in California [Health and Safety Code](#) Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This section is not intended to give any person independent legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the cultivation of marijuana when it is authorized by California state law for medical or other purposes. Pursuant to Section 11362.777 of the California [Health and Safety Code](#), effective January 1, 2016, this section is also intended to expressly reserve any future local licensing authority granted to the city by that section.

(b) **Applicability.** No part of this section shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. Nothing in this section shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of marijuana that is otherwise illegal under local or state law. No provision of this section shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney’s office, the Attorney General of the State of California or the United States of America.

(c) **Definitions.** In addition to the definitions set forth in Section [40.01.010](#), the following words and phrases shall have the following meanings when used in this section:

(1) **Commercial cultivation** means cultivation of medical marijuana licensed by the State of California and the city in accordance with the Medical Marijuana Regulation and Safety Act, California [Business and Professions Code](#) Section 19300 et seq., and contemplated by the definition of “commercial cannabis activity” set forth in California [Business and Professions Code](#) Section 19300.5(k), as amended.

(2) **Primary caregiver** shall have the same definition as set forth in California [Health and Safety Code](#) Section 11362.7(d), as it may be amended.

(3) **Qualified patient** shall mean a person identified in California [Health and Safety Code](#) Section 11362.7(c) or (f), as they may be amended.

(d) **Indoor cultivation.** Indoor cultivation of marijuana is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

(1) All indoor cultivation, including by a qualified patient or primary caregiver, shall occur in a dwelling or fully-enclosed accessory building or structure, as those terms are defined in Section [40.01.010](#) of this chapter.

(2) The medical marijuana is cultivated by:

(A) A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical marijuana to any other person; or

(B) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical marijuana exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California [Health and Safety Code](#) Section 11362.765(c).

(3) Structures and equipment used for indoor cultivation, such as indoor grow lights, shall comply with all applicable building, electrical and fire code regulations as adopted by the city.

(4) All accessory buildings and structures used for indoor cultivation shall comply with the locational and other requirements set forth in Section [40.26.010](#) of this chapter.

(5) Indoor marijuana cultivation may occur inside a dwelling and/or an accessory building or structure on the same parcel, so long as the cumulative cultivation area totals no larger than fifty contiguous square feet per qualified patient, and no larger than two hundred fifty contiguous square feet for primary caregivers, regardless of how many qualified patients or primary caregivers reside at the premises.

(6) Cultivation of marijuana shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).

(7) No exterior evidence of medical marijuana cultivation occurring at the property shall be discernable from the public right-of-way.

(8) Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.

(9) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting medical marijuana cultivation by tenants.

(e) **Outdoor cultivation.** Outdoor marijuana cultivation, including by a qualified patient or primary caregiver, is prohibited in all zoning districts in the city.

(f) **Commercial cultivation.** Commercial cultivation of marijuana is prohibited in all zoning districts in the city.

(g) **Nuisance.** Any violation of this section is declared to be a public nuisance and may be abated by the city pursuant to Chapter 23 of this code.

(h) **Penalty.** A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this code solely to the extent such con-

duct or condition is immune from criminal liability pursuant to the Compassionate Use Act of 1996 ([Health and Safety Code](#) Section 11362.5) and/or the Medical Marijuana Program ([Health and Safety Code](#) Section 11362.7 et seq.) as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.

(i) **Review and community outreach.** The city council shall be charged with reviewing this section and the regulations contained therein no later than December 2016. The city council shall, in

preparation for such review, pursue community dialogue to ensure this section protects the public health and safety and appropriately regulates the cultivation of medical marijuana.

(j) **Amendments.** In the event of future amendments to this section, the city shall have the authority to implement and impose additional requirements granted by law, including, but not limited to, permit or licensing requirements regarding commercial medical marijuana cultivation beyond the limited cultivation permitted by this section. (Ord. 2467 § 3, 2016)