

**CITY OF SAN JUAN BAUTISTA**  
**PLANNING COMMISSION STAFF REPORT**

To: The Honorable Chair and Planning Commission

From: The City Attorney

RE: BAN ON MARIJUANA SALES, CULTIVATION AND DELIVERY

Date: August 31, 2017

REQUEST:

It is requested that the City Planning:

1. Review the attached draft Ordinance to ban sales, cultivation and delivery of marijuana within City Limits, including environmental review; and,
2. Make a recommendation to the City Council that it approve the environmental review and Ordinance in its current form.

BACKGROUND:

Proposition 64, the Adult Use of Marijuana Act (AUMA) was passed by the voters, last November. AUMA legalized the commercial sale, use and cultivation of marijuana. If the City wants to ban commercial sales and cultivation of non-medicinal marijuana, the ordinance currently in place, must be revised. The State is not going to issue licenses for such marijuana businesses until January 1, 2018, at the earliest. The AUMA expressly recognizes the authority of local governments to adopt reasonable cultivation regulations, which may include a complete ban on dispensaries and private outdoor cultivation. (Health and Safety Code § 11362.2.) Recent changes to State law have merged the types of licenses required for commercial adult-use cannabis activity and commercial medicinal cannabis activity, including those operations for which licenses may be obtained, as set forth in California Business and Professions Code Sections 26050 and 26061. Local governments can choose to allow all, some, or none of the commercial cannabis licenses, which span the supply chain from cultivation and manufacturing to testing, distribution, and retail sales.

At the last City Council meeting the City Council conceptually reviewed the draft ordinance attached hereto as Exhibit "A" and directed staff to conduct environmental review and provide the ordinance in the current form to the Planning Commission. They also hired a consultant to study an ordinance to possibly allow commercial adult-use cannabis activity and/or commercial medicinal cannabis activity in San Juan Bautista. However, since it may take some time to study the matter and bring back an ordinance which suits the needs of the City, the City Council recognized that an ordinance to ban such uses is necessary until the appropriate ordinance can be adopted. It would be added to the City Code to follow the current ordinance, which only bans medical marijuana dispensaries.

## ENVIRONMENTAL REVIEW

The approval of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) because pursuant to CEQA Guidelines Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); and, 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively the approval of this ordinance is not a “Project” under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

## DISCUSSION

Business and Professions Code section 26200 provides that cities may “completely prohibit the establishment or operation of one or more types of businesses licensed under” the AUMA. However, cities cannot prohibit marijuana distribution and transportation on public roads. (Bus. & Prof. Code § 26080(b).)The best interpretation of the AUMA is that a city could prohibit delivery of marijuana to locations inside the City as an exercise of its constitutional police power and land use authority. The City Council directed that the ordinance ban deliveries, until such time as the matter can be studied and a new ordinance passed.

The City currently has a ban on medical marijuana dispensaries. The attached revises the current ban to include a ban on both commercial adult-use cannabis activity and commercial medicinal cannabis activity, including those operations for which licenses may be obtained, as set forth in California Business and Professions Code Sections 26050 and 26061. The City Council sees the attached as provisional and anticipates that the ordinance may be repealed and replaced with an ordinance to permit uses, at such time as such an ordinance has been vetted and ready for adoption.

## CONCLUSION:

It is recommended that the attached ordinance and environmental review be approved by the Planning Commission and forwarded to the City Council for a first and second reading to pass the Ordinance, prior to January of 2018.

**EXHIBIT "A"**

**ORDINANCE NO. 2017-\_\_\_**

**ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN JUAN BAUTISTA ADDING CHAPTER  
5-14.6 TO THE SAN JUAN BAUTISTA MUNICIPAL  
CODE TO BAN MARIJUANA DISPENSARIES**

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**WHEREAS**, State Law recognizes the authority of local governments to adopt reasonable cultivation regulations, which may include a complete ban on dispensaries and private outdoor cultivation. (Health and Safety Code § 11362.2); and,

**WHEREAS**, this Planning Commission has determined that it is in the best interests of the City of San Juan Bautista, its citizens, and its visitors, that marijuana dispensaries should be prohibited within the City until such time as the matter can be studied and it can be determined whether marijuana related uses are permissible in the City and makes the recommendation to the City Council to adopt the ordinance set forth below.

**SECTION 1.** A new Chapter 5-14.6 is hereby added to the San Juan Bautista Municipal Code, to read as follows:

**Chapter 5-14.6 PROHIBITION OF MARIJUANA DISPENSARIES, SALES,  
CULTIVATION AND DELIVERY.**

5-14.6-010 Definition of "Marijuana Dispensary."

(A) "Marijuana Dispensary" is defined as any facility; clinic; cooperative; club; business; retail facility; group or location, whether fixed or mobile; including any type of operation which could be licensed for commercial adult-use cannabis activity and/or commercial medicinal cannabis activity, including those operations for which licenses may be obtained as set forth in California Business and Professions Code Sections 26050 and 26061; and, where marijuana, or any marijuana infused product is produced, made available to, sold, exchanged, or

distributed to any person. A marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accordance with this code and other applicable law:

- (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
- (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
- (5) A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.
- (6) Personal use, cultivation or exchange of marijuana, as legally permitted by Health and Safety Code Section 11018.

#### 5-14.6-020 Marijuana Dispensaries Prohibited.

(A) Marijuana dispensaries are prohibited in the City of San Juan Bautista. No person shall locate; operate; own; suffer; allow to be operated; or aid, abet or assist in the operation of any fixed or mobile marijuana dispensary, including any type of operation for which a license could be obtained from the State of California for commercial adult-use cannabis activity and/or commercial medicinal cannabis activity, inclusive of those operations for which licenses may be obtained such as set forth in California Business and Professions Code Sections 26050 and 26061; within the City in any zone. The operation of a Marijuana Dispensary in the City of San Juan Bautista shall constitute a public nuisance.

#### 5-14.6-030 Marijuana Cultivation Prohibited.

(A) Marijuana Cultivation is prohibited in the City of San Juan Bautista, in all zones, except that not more than six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty one (21) inside a private residence, or inside an accessory building to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use, as permitted by the Adult Use of Marijuana Act.

5-14.6-040 Marijuana Deliveries to locations inside the City of San Juan Bautista  
(A) Delivery of Marijuana or marijuana infused products for retail purposes or to exchange for goods or services, to locations inside of the City of San Juan Bautista, is prohibited.

**SECTION 2.** Severability. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause, and phrase of this ordinance. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

**SECTION 3.** Environmental assessment. The City Council declares that the approval of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) because pursuant to CEQA Guidelines Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); and, 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively the approval of this ordinance is not a “Project” under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

**SECTION 4.** Effective date. This ordinance shall go into effect thirty days after the date of its adoption.

**THE FOREGOING ORDINANCE** and environmental review is approved by the Planning Commission and is forwarded to the City Council for adoption as an ordinance at a regular meeting of the San Juan Bautista Planning Commission City Council on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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**John Hopper, Chair**

**ATTEST:**

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**Trish Paetz, Deputy City Clerk**

**APPROVED AS TO FORM:**

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**Deborah Mall, City Attorney**