

**EFFECTIVE DATE
OF ORDINANCE**

January 4, 2018

ORDINANCE NO. 2634 N.C.S.

Introduced by

Seconded by

Gabe Kearney

Teresa Barrett

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA REPEALING AND
REPLACING CHAPTER 10.15, "MEDICAL MARIJUANA," OF THE CITY OF PETALUMA
MUNICIPAL CODE, RETITLING THE CHAPTER "CANNABIS," AND EXTENDING THE CITY'S
CANNABIS REGULATIONS TO MEDICAL AND NON-MEDICAL CANNABIS USES IN THE CITY**

WHEREAS, in 1996 the voters of the state of California approved Proposition 215 which
was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled "The
Compassionate Use Act of 1996" ("**CUA**"); and

WHEREAS, the intent of the CUA was to enable persons who are in need of marijuana for
medical purposes to obtain and use it under specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420, known as the "Medical Marijuana
Program" (codified in Health and Safety Code Sections 11362.7 through 11362.85) ("**MMP**")
became effective to clarify the scope of the CUA; and

WHEREAS, the CUA was limited in scope in that it provided a defense from criminal
prosecution under state law for possession and cultivation of marijuana for qualified patients
and their primary caregivers; established a statewide identification program and afforded
qualified patients, persons with identification cards and their primary caregivers an affirmative
defense to certain enumerated criminal sanctions that otherwise applied to transporting,
processing, administering or distributing marijuana; and

WHEREAS, neither the CUA nor the MMP required or imposed an affirmative duty or
mandate upon local governments, such as the City of Petaluma, to allow, authorize or sanction
the establishment and the operation of facilities cultivating, distributing, or processing medical
marijuana within their boundaries; and

1 **WHEREAS**, in 2007 the Petaluma City Council adopted Chapter 10.15 of the Petaluma
2 Municipal Code prohibiting medical marijuana dispensaries in the City to promote the public
3 health, safety and welfare and protect citizens from impacts associated with medical marijuana
4 dispensaries, including, but not limited to, increased public consumption of marijuana and the
5 potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from
6 dispensaries, loitering, fraud in obtaining or use of medical marijuana identification cards,
7 robbery, assaults and other crimes, and increased demands for police response resulting from
8 activities at medical marijuana dispensaries reducing the ability of the City's public safety
9 officers to respond to other calls for service; and

10
11 **WHEREAS**, on May 5, 2013, the California Supreme Court issued its opinion in *City of*
12 *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729, which
13 held that neither the CUA nor the MMP expressly or impliedly preempts the authority of California
14 cities and counties, under their traditional land use and police powers, to restrict, limit, or entirely
15 exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance
16 actions; and

17
18 **WHEREAS**, on August 29, 2013, Deputy U.S. Attorney General James Cole issued a
19 memorandum to all federal prosecutors providing guidance on the enforcement of the federal
20 Controlled Substances Act, 21 U.S.C. 801, *et seq.*, regarding cannabis, indicating that
21 enforcement of state law by state and local law enforcement and regulatory bodies should
22 remain the primary means of addressing marijuana related activity in jurisdictions that have
23 enacted laws legalizing marijuana in some form and that have also implemented strong and
24 effective regulatory and enforcement systems to control the cultivation, distribution, sale and
25 possession of marijuana; and

26
27 **WHEREAS**, on November 26, 2013, the Third District Court of Appeal issued its opinion in
28 *Maral v. City of Live Oak*, (2013) 221 Cal.App.4th 975, which held that the CUA and the MMP do
29 not preempt a city's police power to prohibit the cultivation of all marijuana within that city; and

30
31 **WHEREAS**, during the 2014/2015 legislative session, the California State Legislature
32 enacted three bills: AB-243, AB- 266, and SB-643 that together established a regulatory scheme
33 governing medical marijuana that was collectively entitled the "Medical Marijuana Regulation
34 and Safety Act" ("MMRSA"); and

1 **WHEREAS**, on December 16, 2014, President Obama signed an omnibus spending bill,
2 including a budget rider, referred to as the Rohrbacher-Farr amendment, which prohibited the
3 U.S. Justice Department from using federally-appropriated funds to prosecute medical
4 marijuana use that complied with state law in states that had legalized medical marijuana; and
5

6 **WHEREAS**, on December 1, 2015, the Fifth District Court of Appeal issued its opinion in
7 *Kirby v. County of Fresno*, (2015) 242 Cal.App.4th 940, which upheld a county ordinance banning
8 medical marijuana dispensaries, cultivation, and storage, but invalidated the ordinance's
9 classification of local medical marijuana cultivation as a misdemeanor, holding that section
10 113662.71 of the California Health and Safety Code, a provision of the MMP, preempts local
11 criminalization of medical marijuana cultivation; and
12

13 **WHEREAS**, although the court in *Kirby* invalidated on preemption grounds the local
14 criminalization of medical marijuana cultivation as a misdemeanor, the court noted that local
15 prosecution of the failure to abate a public nuisance involving medical marijuana cultivation is
16 not preempted, because the Legislature recognizes the failure to abate a public nuisance after
17 notice as a separate crime; and
18

19 **WHEREAS**, in January, 2016, the City Council adopted amendments to Chapter 10.15 of
20 the Petaluma Municipal Code, partly in response to the MMRSA: to prohibit commercial
21 cannabis activity in the City; to prohibit marijuana cultivation in the City (except for limited
22 indoor and outdoor cultivation by qualified patients and primary caregivers in residential areas,
23 subject to limitations intended to avoid nuisance conditions); to restrict medical marijuana
24 delivery in the City; prohibit granting of entitlements for marijuana uses in the City; and to
25 declare violations of the chapter to be a public nuisance; and
26

27 **WHEREAS**, in *United States v. McIntosh*, (2016) 833 F3d 1163, filed August 16, 2016, the
28 Ninth Circuit Court of appeals construed the Rohrbacher-Farr budget rider as prohibiting the U. S.
29 Department of Justice from spending funds from relevant appropriations acts for the prosecution
30 of individuals who engaged in conduct permitted by state medical marijuana laws and who
31 fully complied with such laws; and
32

33 **WHEREAS**, in November 2016, California voters approved the Control, Regulate and Tax
34 Adult Use of Marijuana Act, referred to in ballot materials as the Adult Use of Marijuana Act
35 ("**AUMA**"), which established a regulatory scheme for nonmedical marijuana similar to that
36 established for medical marijuana under the MMRSA; and

1 **WHEREAS**, following its adoption by California voters, the AUMA was codified in various
2 provisions of state law, including in Article 2 entitled "Cannabis" in the Uniform Controlled
3 Substances Act within the California Health and Safety Code, and in Division 10 entitled the
4 "Medicinal and Adult-Use Cannabis Regulation and Safety Act" of the California Business and
5 Professions Code; and
6

7 **WHEREAS**, the AUMA decriminalized for purposes of state law, subject to specified
8 restrictions, certain specified nonmedical cannabis uses pursuant to California Health and Safety
9 Code section 11362.1, including: possession, processing, transporting, purchasing, obtaining and
10 giving away to persons 21 years old or older, without compensation, not more than 28.5 grams
11 of non-concentrated cannabis or not more than 8 grams of concentrated cannabis, including
12 cannabis contained in cannabis products; possessing, planting, cultivating, harvesting, drying or
13 processing not more than six living cannabis plants and possessing the cannabis produced by
14 the plants; smoking or ingesting cannabis or cannabis products, and possessing, transporting,
15 purchasing, obtaining, using, manufacturing, or giving away to persons 21 years of age or older
16 without compensation cannabis accessories;; and
17

18 **WHEREAS**, in accordance with California Health and Safety Code section 11362.2,
19 subdivision (a), the personal cultivation of cannabis permitted under the AUMA must be in
20 accordance with reasonable local regulations; must ensure that living plants and cannabis they
21 produce in excess of 28.5 grams are kept within a private residence or upon the grounds of a
22 private residence in a locked space not visible from a public place; and cannot exceed six
23 living plants cultivated, harvested, dried or processed within a single private residence at one
24 time; and
25

26 **WHEREAS**, in accordance with California Health and Safety Code section 11362.2,
27 subdivision (b), paragraphs (1) and (2), the AUMA permits local agencies to impose reasonable
28 regulations on personal cannabis cultivation and processing, so long as such regulations are not
29 a complete prohibition on such activity within a private residence or an accessory structure to a
30 private residence that is fully enclosed and secure; and
31

32 **WHEREAS**, in accordance with California Business and Professions Code section 26080,
33 subdivision (b), the AUMA prohibits local jurisdictions from preventing those that are licensed
34 under the AUMA from transporting cannabis or cannabis products on public roads; and
35

1 **WHEREAS**, in accordance with California Health and Safety Code section 11362.2,
2 subdivision (b), paragraph (3), the AUMA authorizes local agencies to completely ban outdoor
3 cultivation of cannabis on the grounds of private residences, unless and until the California
4 Attorney General determines that adult use of cannabis is lawful under federal law, and
5

6 **WHEREAS**, in accordance with California Health and Safety Code section 11362.45,
7 subdivisions (f) and (g), the AUMA permits public and private employers to maintain drug and
8 alcohol-free workplaces, to prohibit cannabis use by employees, and to restrict or prohibit
9 cannabis activity in buildings owned, leased or occupied by a local agency; and
10

11 **WHEREAS**, in accordance with California Business and Professions Code section 26200,
12 subdivision (a), nothing in the AUMA supersedes or limits the authority of a local jurisdiction to
13 regulate or prohibit within the local jurisdiction the establishment or operation of cannabis
14 businesses that are subject to state license requirements under the AUMA; and
15

16 **WHEREAS**, cannabis remains an illegal substance under the Federal Controlled
17 Substances Act, 21 U.S.C. 801, *et seq.*, which makes it unlawful for any person to cultivate,
18 manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense
19 cannabis for any reason, even though state law decriminalizes under specified state statutes
20 specified use of cannabis by specified persons; and
21

22 **WHEREAS**, the Rohrbacher-Farr Amendment, which prohibits the U.S. Justice Department
23 from using federally-appropriated funds to prosecute medical marijuana use that complies with
24 state law in states that have legalized medical marijuana, has been extended most recently in
25 the spending bill President Trump signed on May 5, 2017, and remains in effect; and
26

27 **WHEREAS**, the August 29, 2013 memorandum issued by Deputy U.S. Attorney General
28 James Cole has not been rescinded and remains in effect directing that enforcement of state
29 law by state and local law enforcement and regulatory bodies should remain the primary
30 means of addressing marijuana related activity in jurisdictions that have enacted laws legalizing
31 marijuana in some form and that have also implemented strong and effective regulatory and
32 enforcement systems to control the cultivation, distribution, sale and possession of marijuana;
33 and
34

35 **WHEREAS**, the City Council has held workshops and discussed potential updates to the
36 City's cannabis regulations in response to the AUMA on June 26, 2017 and on October 2, 2017,

1 at which workshops the City Council received comments from various stakeholders and
2 interested parties, and provided City staff policy direction; and
3

4 **WHEREAS**, the City Council considered a new draft ordinance entitled "Cannabis"
5 intended to replace Chapter 10.15 in the Petaluma Municipal Code at the November 6, 2017
6 City Council meeting, at which meeting the City Council discussed comments on the draft
7 ordinance received from community members and other stakeholders and gave staff further
8 direction regarding preparation of an ordinance to replace existing Chapter 10.15 in the
9 Petaluma Municipal Code; and
10

11 **WHEREAS**, the City Council's direction to staff regarding adoption of local cannabis
12 regulations following enactment of the AUMA reflects a dual focus on recognizing and
13 respecting the will of the California voters in approving the AUMA, through adoption of less
14 restrictive local cannabis regulations, while at the same time promoting the public health, safety
15 and welfare of the Petaluma community through strong and effective local regulatory and
16 enforcement systems to, in conjunction with state law, control the cultivation, distribution, sale
17 and possession of cannabis in the City; and
18

19 **FINDINGS**

20

21 **WHEREAS**, the City of Petaluma Police Department, City residents and other public
22 entities have reported adverse impacts from the outdoor cultivation of cannabis within the City,
23 including offensive odors, increased risk of trespassing and burglary, and acts of violence in
24 connection with the commission of such crimes or the occupants' attempts to prevent such
25 crimes; and
26

27 **WHEREAS**, the strong odor of cannabis plants, which increases as the plants mature, is
28 offensive to many individuals and creates an attractive nuisance, alerting people to the
29 location of valuable cannabis plants and creating an increased risk of crime; and
30

31 **WHEREAS**, Petaluma has experienced structure fires and building damage threatening
32 the quality and safety of City neighborhoods as a result of indoor cannabis cultivation within the
33 City, with 7 such incidents occurring between December 2010 and May 2015, and a total of 33
34 structure fires within the Sonoma County area attributed to illegal indoor cannabis cultivation
35 operations; and
36

1 **WHEREAS**, to protect the public health, safety, and welfare, it is the desire of the City
2 Council to replace Chapter 10.15 of the City of Petaluma Municipal Code prohibiting medical
3 marijuana dispensaries and commercial marijuana activity, and limiting medical marijuana
4 cultivation, and delivery of marijuana within the City, while preserving access of qualified
5 patients and primary caregivers to medical cannabis, with a new chapter 10.15 entitled
6 "Cannabis" making medical and nonmedical cannabis subject to the City's cannabis
7 regulations in accordance with the City's general police power pursuant to Article XI, Section 7
8 of the California Constitution and the authority for local cannabis regulations contained in the
9 AUMA; and

10
11 **WHEREAS**, mindful of the fact that cannabis possession and use is prohibited under
12 federal law and decriminalized under state law, it is the Council's intention that nothing in this
13 chapter shall be construed, in any way, to expand the rights of anyone to use or possess
14 cannabis under state law, or to engage in any public nuisance; and

15
16 **WHEREAS**, for purposes of compliance with the California Environmental Quality Act
17 ("CEQA") and the CEQA Guidelines, the City Council finds that new Petaluma Municipal Code
18 Chapter 10.15 will result in negligible environmental impacts, if any, because a) the exceptions in
19 Section 10.15.040 for manufacture and sale of topical or edible cannabis products, cannabis
20 testing laboratories and cannabis delivery-only sales are, pursuant to that section, subject to
21 granting of a license, permit or other authorization or notice issued by an authorized city official,
22 which discretionary approval will be subject to CEQA review for each such proposed use; and
23 b) the revisions to the City's cannabis cultivation regulations pursuant to Section 10.15.050 are
24 minor and intended only to harmonize the regulations with the AUMA, with negligible
25 anticipated environmental impacts; and

26
27 **WHEREAS**, in view of the negligible environmental impacts anticipated from new Chapter
28 10.15 (that will not be subject to subsequent CEQA review), this ordinance is exempt from CEQA
29 pursuant to Section 15061(b)(3) of the CEQA Guidelines because there is no possibility that the
30 activity may have a significant impact on the environment, as well as pursuant to Section 15301
31 of the CEQA Guidelines, which applies to the operation, repair maintenance, permitting, and
32 licensing or minor alteration of existing public or private structures, facilities, or mechanical
33 equipment involving negligible or no expansion of use beyond that existing at the time of the
34 lead agency's determination, and pursuant to Section 15303 of the CEQA Guidelines, which
35 applies to construction and location of limited numbers of new, small facilities or structures,
36 installation of small new equipment and facilities in small structures, and the conversion of

existing small structures from one use to another where only minor modifications are made in the exterior of the structure;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

Section 1: Chapter 10.15, Entitled "Medical Marijuana," of the Petaluma Municipal Code, is hereby repealed in its entirety.

Section 2: The above recitals are hereby declared to be true and correct and are incorporated into this ordinance by this reference.

Section 3: A New Chapter 10.15, Entitled "Cannabis," is hereby added to the Petaluma Municipal Code, to read as follows:

CHAPTER 10.15 CANNABIS

Section 10.15.010 Purpose.

The purpose of this chapter is to recognize and respect the will of the California voters in approving in November, 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, referred to as the Adult Use of Marijuana Act ("AUMA"), which legalized, subject to certain restrictions, specified nonmedical cannabis uses for purposes of state law, through adoption of less restrictive local cannabis regulations, while at the same time promoting the public health, safety and welfare of the Petaluma community by:

A. Protecting citizens from the secondary impacts associated with cannabis dispensaries and commercial cannabis activity, including, but not limited to, increased public consumption of cannabis and the potential for increased cannabis DUIs, illegal resale of cannabis obtained at low cost from dispensaries, loitering, robbery, assaults, and other crimes;

B. Protecting citizens from secondary impacts associated with commercial cannabis activity such as cannabis cultivation, including, but not limited to, electrical fires and ignition of chemical substances utilized in the cultivation process, crimes occurring at grow sites, and neighborhood concerns regarding odors, late night traffic, and related nuisances;

1 C. Protecting citizens from secondary impacts of cannabis delivery, including, but
2 not limited to, delivery during nighttime hours and delivery by minors;

3
4 D. Preventing increased demands for police response resulting from activities at
5 cannabis dispensaries and cultivation sites, commercial cannabis activity and cannabis
6 delivery and thereby avoiding reduction in the ability of the city's public safety officers to
7 respond to other calls for service; and

8
9 E. Maintaining the access of qualified patients and primary caregivers to medical
10 cannabis and medical cannabis products.

11
12 **Section 10.15.020 Definitions**

13 For purposes of this chapter, the following terms are defined as follows:

14
15 A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis*
16 *indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin,
17 whether crude or purified, extracted from any part of the plant; and every compound,
18 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, as
19 defined in California Business and Professions Code section 26001, subdivision (f), as that
20 section and subdivision may be amended or interpreted by the California courts or
21 superseded by any successor statute, "Cannabis" also means the separated resin,
22 whether crude or purified, obtained from cannabis. "Cannabis" does not include the
23 mature stalks of the plant, fiber produced from the stalks, oil or cake made from the
24 seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or
25 preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake,
26 or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not
27 mean "industrial hemp" as defined by Section 11018.5 of the California Health and
28 Safety Code, as that section may be amended or interpreted by the California courts or
29 superseded by any successor statute. "Cannabis" includes "medical cannabis."

30
31 B. "Cannabis concentrate" means cannabis that has undergone a process to
32 concentrate one or more active cannabinoids, thereby increasing the product's
33 potency, in accordance with the definition in California Business and Professions Code
34 section 26001, subdivision (h), as that section and subdivision may be amended or
35 interpreted by the California courts or superseded by any successor statute.

1 C. "Cannabis products" means cannabis that has undergone a process whereby
2 the plant material has been transformed into a concentrate, including, but not limited to,
3 concentrated cannabis, or an edible or topical product containing marijuana or
4 concentrated cannabis and other ingredients in accordance with the definition in
5 California Health and Safety Code section 11018.1, as that section may be amended or
6 interpreted by the California courts or superseded by any successor statute.

7
8 D. "Commercial cannabis activity" means the cultivation, possession, manufacture,
9 distribution, processing, storing, laboratory testing, labeling, transportation, distribution,
10 delivery or sale of cannabis and cannabis products in accordance with the definition in
11 California Business and Professions Code Section 26001, subdivision (k), as that section
12 and subdivision may be amended or interpreted by the California courts or superseded
13 by any successor statute.

14
15 E. "Cultivation" means any activity involving the planting, growing, harvesting,
16 drying, curing, grading, or trimming of cannabis, in accordance with the definition in
17 California Business and Professions Code Section 26001, subdivision (m), as that section
18 and subdivision may be amended or interpreted by the California courts or superseded
19 by any successor statute.

20
21 F. "Customer" means a natural person 21 years of age or older in accordance with
22 the definition in California Business and Professions Code Section 26001, subdivision (n), as
23 that section and subdivision may be amended or interpreted by the California courts or
24 superseded by any successor statute.

25
26 G. "Delivery" means the commercial transfer of cannabis or cannabis products to a
27 customer and includes the use by a retailer of any technology platform in accordance
28 with the definition in California Business and Professions Code section 26001, subdivision
29 (p), as that section and subdivision may be amended or interpreted by the California
30 courts or superseded by any successor statute.

31
32 H. "Dispensary" means a facility where medical cannabis, medical cannabis
33 products, or devices for the use of medical cannabis or medical cannabis products are
34 offered, either individually, or in any combination, for retail sale at that location, as well
35 as an establishment that delivers, pursuant to express authorization by local ordinance,
36 medical cannabis and medical cannabis products as part of a retail sale. Dispensary

1 does not include the following uses, so long as the location of such uses is otherwise
2 regulated by and strictly complies with this code and other applicable law, including
3 California Health and Safety Code Section 11362.5, known as the CUA, and California
4 Health and Safety Code Section 11362.7 and following, known as the MMP, as such
5 sections may be amended or interpreted by the California courts or superseded by any
6 successor statute:

- 7
- 8 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety
9 Code.
- 10 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health
11 and Safety Code.
- 12 3. A residential care facility for persons with chronic life-threatening illness
13 licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
- 14 4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of
15 Division 2 of the Health and Safety Code.
- 16 5. The delivery, administration or provision of medical cannabis by a designated
17 primary caregiver to the qualified patient of the primary caregiver or to the
18 person with an identification card who has designated the individual as a
19 primary caregiver at the primary residence of the qualified patient or person
20 with an identification card who has designated the individual as a primary
21 caregiver.
- 22

23 I. "Fully enclosed and secure structure" means a code compliant space within a
24 building, greenhouse or other structure which has a complete roof enclosure supported
25 by connecting walls extending from the ground to the roof, which is secure against
26 unauthorized entry, provides complete visual screening, and which is accessible only
27 through one or more locking doors.

28

29 J. "Licensee" means any person holding a license under Division 10, entitled
30 "Cannabis," of the California Business and Professions Code, and includes the holder of a
31 testing laboratory license, in accordance with the definition in California Business and
32 Professions code section 26001, subdivision (z), as that section and subdivision may be
33 amended or interpreted by the California courts or superseded by any successor statute.

34

35 K. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or
36 prepare a cannabis product, in accordance with the definition in California Business and

Professions Code section 26001, subdivision (ag), as that section and subdivision may be amended or interpreted by the California courts or superseded by any successor statute.

L. "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, in accordance with the definition in California Business and Professions Code section 26001, subdivision (ah), as that section and subdivision may be amended or interpreted by the California courts or superseded by any successor statute.

M. "Medical cannabis" or "medical cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation, in accordance with the definition in California Business and Professions Code section 26001, subdivision (ai), as that section and subdivision may be amended or interpreted by the California courts or superseded by any successor statute.

N. "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, subdivision (d), as that section and subsection may be amended or interpreted by the California courts, including but not limited, to the California Supreme Court case of People v. Mentch (2008) 45 Cal. 4th 274, or superseded by any successor statute.

O. "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, subdivision (f), as that section and subsection may be amended or interpreted by the California courts or superseded by any successor statute.

P. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, in accordance with the definition in California Health and Safety Code section 11362.2, subdivision (b), paragraph (5), as that section, subdivision and paragraph may be amended or interpreted by the California courts or superseded by any successor statute.

1
2 Q. "Sell," "sale," and "to sell" mean any transaction whereby, for any consideration,
3 title to cannabis is transferred from one person to another, and includes the delivery of
4 cannabis or cannabis products pursuant to an order placed for the purchase of the
5 same and soliciting or receiving an order for the same, but does not include the return of
6 cannabis or cannabis products by a licensee to the licensee from whom the cannabis or
7 cannabis product was purchased, in accordance with the definition in California
8 Business and Professions Code section 26001, subdivision (as), as that section and
9 subdivision may be amended or interpreted by the California courts or superseded by
10 any successor statute.
11

12 R. "Testing laboratory" means a laboratory, facility or entity in the state that offers or
13 performs tests of cannabis or cannabis products and that is both of the following:
14 accredited by an accrediting body that is independent from all other persons involved in
15 commercial cannabis activity in the state and licensed by the Bureau of Cannabis
16 Control, in accordance with the definition in California Business and Professions Code
17 section 26001, subdivision (at), as that section and subdivision may be amended or
18 interpreted by the California courts or superseded by any successor statute.
19

20 S. "Volatile solvent" means a solvent that is or produces a flammable gas or vapor
21 that, when present in the air in sufficient quantities, will create explosive or ignitable
22 mixtures, in accordance with the definition in California Health and Safety Code section
23 11362.3, subdivision (b), paragraph (3), as that section, subdivision and paragraph may
24 be amended or interpreted by the California courts or superseded by any successor
25 statute.
26

27 **Section 10.15.030 Prohibition of Dispensaries**

28 It is unlawful for any person to engage in, conduct or carry on, or to permit to be
29 engaged in, conducted or carried on, in the City of Petaluma, the operation of a
30 dispensary, except for dispensaries that qualify for the exception in section 10.15.040(D).
31

32 **Section 10.15.040 Commercial Cannabis Activity**

33 A. It is unlawful for any person to engage in, conduct, or carry on, or to permit to be
34 engaged in, conducted or carried on, in the City of Petaluma, commercial cannabis
35 activity, other than the commercial cannabis activity specified in paragraphs B through
36 D in this section. The exceptions in paragraphs B through D shall only apply: 1) while and

1 to the extent the activity is conducted pursuant to and in accordance with a current,
2 valid, unexpired, unrevoked, fully-paid, license, permit, or other authorization or notice
3 issued by an authorized city official, and pursuant to and in accordance with all other
4 applicable state and local laws and regulations, including, but not limited to, the
5 regulations adopted or promulgated pursuant to section 10.15.090; and 2) to
6 commercial cannabis activity conducted in areas of the city where such uses are
7 permitted in accordance with the city's zoning regulations.

8
9 B. Manufacture and only business to business (non-retail) sale of topical or edible
10 cannabis products using cannabis infusions, infusion processes, or cannabis
11 concentrates, but excluding manufacture of cannabis products involving volatile
12 solvents, and excluding repackaging cannabis or cannabis products or re-labeling
13 cannabis or cannabis product containers;

14
15 C. Testing laboratories;

16
17 D. Retail sale of cannabis and cannabis products using a delivery-only method in
18 accordance with section 10.15.060, at a maximum of two different locations in the city,
19 with no sale of cannabis or cannabis products to customers, primary care givers or
20 qualified patients occurring at the business location, no customers, primary care givers or
21 qualified patients permitted at the business location at any time, and no signage at the
22 business location or on the delivery vehicles indicating the presence of cannabis or
23 cannabis products or that the seller sells cannabis or cannabis products.

24 25 **Section 10.15.050 Cannabis Cultivation**

26 It is unlawful for any person to engage in, conduct or carry on, or to permit to be
27 engaged in, conducted or carried on, in the City of Petaluma, the cultivation of
28 cannabis, other than the cultivation of cannabis in accordance with and as specified in
29 paragraphs A and B in this section. The exceptions in paragraphs A and B are not
30 subject to, and do not require, issuance of a license, permit, or other authorization or
31 notice issued by an authorized city official.

32
33 A. Indoor cultivation of not more than six living cannabis plants in a private
34 residence, or a lesser number if both indoor cultivation pursuant to this paragraph A and
35 outdoor cultivation pursuant to paragraph B of this section is occurring at the private
36 residence, such that the total number of living cannabis plants at the private residence,

1 including indoor and outdoor cultivation, does not exceed a total of six living cannabis
2 plants; where the cultivation area does not exceed 50% or 100 square feet of the non-
3 living or garage area of the private residence; does not displace any required on-site
4 parking; is within a fully-enclosed and secure structure with no visual or olfactory
5 evidence of cultivation detectable from the public right of way or other private property;
6 does not utilize lighting that exceeds 1,200 watts; does not require the use of an electric
7 generator; and does not involve the use of volatile solvents; and
8

9 B. Outdoor cultivation on the grounds of a private residence, but only where less
10 than the six living cannabis plants permitted pursuant to paragraph A are being
11 cultivated within a fully-enclosed and secure structure, such that the total number of
12 living cannabis plants at the private residence, including indoor and outdoor cultivation,
13 does not exceed a total of six living cannabis plants; with no visual or olfactory evidence
14 of cultivation detectable from the public right of way or other private property; and
15 where the outdoor cultivation does not utilize lighting that exceeds 1,200 watts, does not
16 require the use of an electric generator, and does not involve the use of volatile solvents.
17

18 **Section 10.15.060 Cannabis Delivery**

19 Subject to the requirements of California Business and Professions Code section 26080,
20 subdivision (b), which prohibits local jurisdictions from preventing those that are licensed
21 under the AUMA from transporting cannabis or cannabis products on public roads within
22 the jurisdiction, as that section and subdivision may be amended or interpreted by the
23 California courts or superseded by any successor statute, it is unlawful for any person to
24 engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on,
25 in the City of Petaluma, the delivery of cannabis; except for delivery of cannabis:
26

27 A. That qualifies for the exception in section 10.15.040(D); and
28

29 B. Delivery of medical cannabis to qualified patients and primary care givers in the
30 City of Petaluma from cannabis sellers lawfully operating outside the City of Petaluma in
31 accordance with all applicable state and local laws.
32

33 For cannabis delivery to qualify for the exceptions in paragraphs A or B of this section,
34 such delivery must 1) be carried out by a person at least 21 years of age; and 2) occur
35 between the hours of 8:00 a.m. and 8:00 p.m.
36

Section 10.15.070 Cannabis Entitlements

No cannabis dispensary, commercial cannabis activity or cannabis delivery operation, (other than commercial cannabis activity or cannabis dispensary or delivery operations that qualify for one or more of the exceptions specified in paragraphs B through D of section 10.15.040), or cannabis cultivation, however described by the applicant, will be eligible for or be issued any license, permit, or other authorization, notice or other entitlement to operate in the city, or have any such entitlement renewed, including, but not limited to, any business license or home occupation permit, and any such application shall be denied citing this section.

Section 10.15.080 Medical Cannabis

No provision of this chapter is to be construed as prohibiting qualified patients and primary care givers in the City of Petaluma from cultivating medical cannabis, or as prohibiting sale or delivery of medical cannabis or medical cannabis products to qualified patients or primary care givers in the City of Petaluma, in accordance with all applicable state and local laws and regulations, including the requirements of this chapter and any regulations promulgated hereunder.

Section 10.15.090 Regulations

The City Council shall, by duly adopted resolution, adopt regulations, or authorize the City Manager to promulgate regulations, intended to implement the requirements of this chapter in accordance all applicable provisions of the city charter, this chapter, the CUA, the MMP, the AUMA, and other applicable law. The City Council shall review this chapter and any regulations adopted or promulgated pursuant to this section from time to time as necessary to ensure effective implementation of this chapter and protection of the public health, safety and welfare.

Section 10.15.100 Prohibited Cannabis Activities a Public Nuisance. Any cannabis dispensary, commercial cannabis activity, cannabis cultivation, cannabis delivery or other cannabis use or activity caused or permitted to exist in the city in violation of any provision of this chapter or any of the regulations adopted or promulgated thereunder shall be and is hereby declared a public nuisance. Violations of this chapter may be enforced by any applicable laws or ordinances, including, but not limited to, chapter 1.10 of this code.

1 **Section 3:** The City Council finds that adoption of this ordinance is exempt from the
2 California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA
3 Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because there is no
4 possibility that the activity may have a significant impact on the environment as well as pursuant
5 to Section 15301 of the CEQA Guidelines, which applies to the operation, repair maintenance,
6 permitting, and licensing or minor alteration of existing public or private structures, facilities, or
7 mechanical equipment involving negligible or no expansion of use beyond that existing at the
8 time of the lead agency's determination, and pursuant to Section 15303 of the CEQA
9 Guidelines, which applies to construction and location of limited numbers of new, small facilities
10 or structures, installation of small new equipment and facilities in small structures, and the
11 conversion of existing small structures from one use to another where only minor modifications
12 are made in the exterior of the structure.
13

14 **Section 4:** If any section, subsection, sentence, clause, phrase or word of this ordinance is for
15 any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent
16 jurisdiction or preempted by state or federal legislation, such decision or legislation shall not
17 affect the validity of the remaining portions of this ordinance. The City Council of the City of
18 Petaluma hereby declares that it would have passed and adopted this ordinance and each
19 and all provisions thereof irrespective of the fact that any one or more of said provisions be
20 declared unconstitutional, unlawful or otherwise invalid.
21

22 **Section 5:** The City Clerk is hereby directed to publish or post this ordinance or a synopsis for
23 the period and in the manner provided by the City Charter and any other applicable law.
24

25 **INTRODUCED**, and ordered posted/published, this 13th day of November 2017.
26

27 **ADOPTED** this 4th day of December 2017, by the following vote:
28
29

30 Ayes: Albertson, Vice Mayor Barrett, Healy, Kearney, King
31 Noes: Miller
32 Abstain: None
33 Absent: Mayor Glass
34
35

36 
37 Teresa Barrett, Vice Mayor
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4 ATTEST:

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10 Claire Cooper
11 Claire Cooper, City Clerk
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APPROVED AS TO FORM:

Eric W. Danly
Eric W. Danly, City Attorney