



THE CITY OF
NOVATO
CALIFORNIA

922 Machin Avenue
Novato, CA 94945
415/ 899-8900
FAX 415/ 899-8213
www.novato.org

STAFF REPORT

MEETING

DATE: October 9, 2018

TO: City Council

FROM: Jeffrey A. Walter, City Attorney
John A. Abaci, Assistant City Attorney
Michael L. Antwine II, Assistant City Manager
Bob Brown, Community Development Director

SUBJECT: **URGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON COMMERCIAL CANNABIS ACTIVITIES**

REQUEST

Hold a public hearing and adopt an urgency ordinance extending a temporary moratorium on commercial cannabis activities except for CB Labs, Liposome Formulations and deliveries of medicinal cannabis from out-of-City businesses (under certain conditions), and make findings that the adoption of said ordinance is exempt under CEQA pursuant to CEQA Guidelines Section 15061, among other provisions.

BACKGROUND

Previous Council Action Pertaining to Commercial Cannabis Activities

At its meeting on November 14, 2017, the City Council adopted an ordinance (Ordinance No. 1629) imposing a temporary moratorium on all commercial cannabis activities except for the delivery of medicinal cannabis from certain out-of-city businesses, CB Labs Novato, LLC, and Liposome Formulations, Inc. and on the cultivation of medicinal cannabis, except for the indoor cultivation of up to 6 plants per residence. At the Council's December 5, 2017 meeting, Council adopted Ordinance No. 1633 thereby extending the provisions of Ordinance No. 1629, an urgency ordinance imposing a moratorium on (i) all outdoor and indoor cultivation of medicinal cannabis, except for the indoor cultivation of up to 6 cannabis plants, and (ii) all commercial cannabis activities, except for CB Labs, Liposome Formulations, and deliveries of medicinal cannabis by businesses which are: 1) located outside of the City; and 2) either existing at the time of the ordinance adoption, or are one of not more than ten (10) businesses that commence operations after the date of the adoption of the ordinance. Ordinance No. 1633 extended the moratorium for 10 months and 15 days beyond the effective period of Ordinance No. 1629, such that the moratorium will expire at midnight on November 13, 2018, if not extended.

This extension request that Council is considering will extend the moratorium ordinance for a period of 1 year and would only apply to commercial cannabis activities. Also before the Council is the adoption of a personal cultivation ordinance that would obviate the need for this moratorium extension to cover personal cultivation activities. During such time as the one year extension would be in effect, the City is to continue its community outreach, fiscal analysis, land use analysis and policy development as it relates to the process of establishing permanent zoning regulations for commercial cannabis activities.

Extension to the Temporary Moratorium on Commercial Cannabis Activities

The proposed moratorium extension ordinance contains the same regulations, prohibitions, requirements, and exceptions relating to commercial cannabis activities that are contained in Ordinance No. 1629 and Ordinance No. 1633. As such, its provisions exempting certain activities from the moratorium are briefly summarized below:

Deliveries of Medicinal Cannabis from Out-of-City Businesses

At Section 3(C) of the proposed moratorium extension ordinance, deliveries of medicinal cannabis from businesses located outside the City to qualified patients and primary caregivers within the City are expressly exempted from the moratorium's prohibitions. Under Section 4 of the proposed moratorium extension, any such delivery business must be State-licensed and locally permitted and obtain a Novato business license and pay the requisite Novato business license tax. In addition, vehicles used in delivering medicinal cannabis must be unmarked without any indication that the vehicle is being used as a cannabis delivery vehicle. Furthermore, cannabis deliveries are limited to the hours from 7:00 a.m. to 11:00 p.m. Only businesses that are located outside the City may make medicinal cannabis deliveries within the City. Further, such businesses must have existed as of November 14, 2017, the date that the moratorium went into effect, or can make such deliveries if they are one of ten (10) businesses that began after November 14, 2017 and otherwise meet the requirements of this ordinance.

CB Labs and Liposome Formulations, Inc. Expressly Exempted

The proposed moratorium extension also expressly exempts CB Labs Novato, LLC and Liposome Formulations, Inc. from the moratorium. Given that Liposome Formulations, Inc. is a business that has been operating in the City of Novato for many years and is not directly involved in the business of selling, distributing, delivering, cultivating or handling cannabis, but rather is extracting cannabinoids from industrial hemp for use in various pharmaceutical products, a provision has been inserted in the ordinance that expressly exempts Liposome Formulations, Inc. from the moratorium altogether.

On the other hand, CB Labs Novato, LLC ("CB Labs") has only been operating in the City for the last couple of years. In its business license application, it did not disclose that it was testing cannabis products. During the Council's discussions on October 24, 2017, with respect to CB Labs, it appeared that the consensus of the Council would support allowing CB Labs to continue operating its testing facility but only pursuant to an agreement with the City. Thus, Section 3(D) of the attached ordinance lays out the conditions under which CB Labs can continue to operate in the City of Novato, including remaining in an agreement with the City of Novato that requires CB Labs' compliance with various terms related to security, audits, payment of fees, appropriate payments to the City, compliance with State law and other similar matters.

Approval of Report Required Under Cal. Government Code Section 65858 Regarding Conditions Leading to Moratorium

Under State law, an interim moratorium ordinance may be adopted based on anticipated changes in land use policies arising from ongoing or anticipated planning studies, such as a zoning code amendment. Ordinance No. 1629 will expire unless extended by vote of the City Council within the 45-day period that the ordinance remains in effect. Under State law, the ordinance may be

extended twice: first for an additional period of 10 months and 15 days and, then, for one year. However, to adopt the extension, the City Council must approve a 65658 report outlining the measures taken to address the conditions that led to the adoption of the original interim moratoria ordinance. The 65658 report is included as an attachment. The approval of the report is indicated within a recital of the proposed ordinance.

RECOMMENDATION

Hold the public hearing and adopt the urgency ordinance extending a temporary moratorium on all commercial cannabis activities, except for (i) deliveries of medicinal cannabis from out-of-City businesses subject to certain conditions, (ii) CB Labs Novato, LLC and (iii) Liposome Formulations, Inc., approve a report on the conditions leading to the adoption of the ordinance, and make findings that the adoption of said ordinance is exempt under CEQA pursuant to CEQA Guidelines Section 15061, among other provisions.

FISCAL IMPACT

The adoption of this ordinance should not incur the City any financial liability; however, its enforcement may require involvement of City enforcement staff and/or City peace officers.

ATTACHMENTS

1. Ordinance
2. Report Required Under Cal. Government Code Section 65858 Regarding Conditions Leading to Moratorium

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO EXTENDING A TEMPORARY MORATORIUM ON ALL COMMERCIAL CANNABIS ACTIVITIES EXCEPT DELIVERIES OF MEDICINAL CANNABIS AND AN EXISTING TESTING LABORATORY AND PHARMACEUTICAL COMPANY, APPROVING A REPORT ON THE CONDITIONS LEADING TO THE ADOPTION OF THE ORDINANCE AND MAKING FINDINGS THAT THE APPROVAL OF SAID RESOLUTION IS EXEMPT UNDER CEQA PURSUANT TO CEQA GUIDELINES SECTION 15061, AMONG OTHER PROVISIONS

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medicinal cannabis for specified medicinal purposes to obtain medicinal cannabis, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996; and

WHEREAS, effective January 1, 2016, the Medical Cannabis Regulation and Safety Act (“MCRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medicinal cannabis businesses. The MCRSA created a dual-licensing system under which medicinal cannabis businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MCRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely; and

WHEREAS, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(d) provides that a State licensing authority shall not approve an application for a State license for commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance; and

continues at all times to remain in full compliance with all applicable federal, state, and local law and regulations for as long as it shall operate within the City.

F. This Ordinance shall also not prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA.

G. To the extent the exceptions set forth in this section conflict with any provision of the City of Novato Municipal Code, these exceptions will control. Furthermore, the exception set forth in Section 3(C), above, shall be temporary and shall only last as long as this ordinance or any extension thereof is in effect. The exception set forth in Section 3(C) shall not confer vested rights on any business falling within its parameters and any such business shall be subject to any future regulations and/or prohibitions adopted by the City applicable to said business.

Section 4. Cannabis Delivery Standards

The following standards apply to cannabis delivery services permitted under this Ordinance:

1. State-licensed and locally-permitted retail cannabis delivery businesses located outside the jurisdictional limits of the city may personally deliver medicinal cannabis and medicinal cannabis products to qualified patients and/or primary caregivers within the city, provided that such deliveries are in strict compliance with state laws and the businesses have obtained a city business license and paid the requisite city business license tax.
2. Vehicles used in the delivery process must be unmarked without any designation or logo that identifies the vehicle as a cannabis delivery vehicle.
3. Cannabis and cannabis products delivered within the city may not occur between 11:00 p.m. and 7:00 a.m.

Section 5. Definitions.

For purposes of this Ordinance, the following definitions shall apply.

A. "Cannabis" means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. Unless otherwise indicated, "cannabis" includes cannabis that is used for medicinal, non-medicinal, or other purposes.

"Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Cannabis" also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5, which said definition provides:

“Industrial hemp” means a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; 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 produced therefrom.

B. "Cannabis accessories" means any equipment, products or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Commercial cannabis activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medicinal, non-medicinal, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses.

E. "Concentrated cannabis" means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate.

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

G. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

H. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as they may be amended from time to time.

I. "Manufacture" means to compound, blend, extract, infuse, dilute or otherwise make or prepare a cannabis product.

J. "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as the same may be amended from time to time.

K. “Medicinal cannabis” means cannabis used for medical purposes as described in Cal. Health & Safety Code section 11362.5.

L. “Primary caregiver” means the individual described in Health & Safety Code section 11362.7(d).

M. “Qualified patient” means an individual who is entitled to the protections of Health & Safety Code section 11362.5.

N. “Testing laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Novato as set forth in the recitals, incorporated by Section 1 of this ordinance.

Section 6. Except as Provided in this Ordinance, Establishment, Maintenance or Operation of Commercial Cannabis Activities Declared Public Nuisance.

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for commercial cannabis activities except as is expressly provided in this ordinance. Violations of this ordinance may be enforced under any applicable laws or ordinances and by any available remedies, including but not limited to injunctions, or administrative penalties under the Novato Municipal Code.

Section 7. Environmental Findings

This ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the environmental regulations of the city. CDD staff has also determined that the ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption and implementation of the ordinance to prohibit all commercial cannabis activity except for the delivery of medicinal cannabis to qualified patients and/or their primary care givers and one already-existing testing laboratory will have a significant effect on the environment because banning activities will not have an impact on the physical environment because there is reliable evidence that there already exist cannabis delivery businesses operating within the city. Moreover, there is no evidence that the activities of CB Labs have created adverse impacts on traffic, parking or any other physical aspect of the environment. Prohibiting all commercial cannabis activities save for the limited activities exempted from the ordinance’s provisions is also exempt under (a) CEQA Guidelines Section 15308 because it is a regulatory action taken by the City in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment and (b) CEQA Guidelines, Section 15060(a)(2) because the prohibition will not result in a direct or reasonably foreseeable indirect physical change in the environment. The City Council has reviewed CDD’s Staff’s

determination of exemption, and based on its own independent judgment, concurs with Staff's determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Marin in accordance with CEQA Guidelines.

Section 8. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Novato hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 9. Effective Date and Duration.

This ordinance shall become effective immediately if adopted by at least four-fifths vote of the City Council, and shall remain in effect until the date that is one year following the last day that Ordinance No. 1633 is in effect, namely, until midnight on November 12, 2019. Those portions of Ordinance No. 1633's prohibition of uses and other terms and provisions set forth by this Ordinance shall be extended to the date that is one year following the last day that the unrepealed portion of Ordinance No. 1633 is in effect, namely, until midnight on November 12, 2019.

Section 10. Posting. This ordinance shall be published in accordance with applicable provisions of law, by either:

Publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

Publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

* * * * *

The urgency ordinance was read and adopted at the regular meeting of the Novato City Council on the 9th day of October, 2018.

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

Mayor of the City of Novato

Attest:

City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato

DRAFT

REPORT REQUIRED UNDER CAL. GOV=T CODE
SECTION 65858 REGARDING CONDITIONS LEADING TO MORATORIUM

Background

On November 14, 2017, the City Council unanimously adopted an interim urgency ordinance (Novato Ordinance No.1629) placing a moratorium on the issuance of any approval, permit, license, or entitlement for the establishment and operation of commercial cannabis activities and indoor and outdoor personal cultivation of medicinal cannabis in Novato, with exceptions including deliveries of medicinal cannabis from outside the City to patients within the City, an existing cannabis testing laboratory and an existing business extracting cannabinoids from industrial hemp for use in pharmaceutical products. The urgency ordinance prohibits the establishment and operation of commercial cannabis activities (such as medical marijuana dispensaries “MMD’s”) in all zoning districts of the City of Novato, except as described above.

The City Council adopted the urgency ordinance pursuant to California Government Code Section 65858, based on recitals of fact justifying its adoption to protect public health, safety, and welfare. These facts include:

- a) The federal Controlled Substances Act criminalizes the possession, use, sale and distribution of marijuana, whereas California’s Compassionate Use Act (CUA) and Medical Marijuana Program Act (MMPA) decriminalize the medical use of marijuana. On November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Among other things, AUMA legalizes the recreational use of cannabis in California for individuals 21 years of age and older. The AUMA also authorizes the personal cultivation of up to six cannabis plants within a private residence or upon the “grounds” of that private residence for nonmedicinal purposes. Following the AUMA, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction.
- b) Much litigation has been spawned by virtue of the adoption of the various acts described above, in particular the CUA and MMPA, and the interpretation and scope of said legislation is likely to continue to be litigated and addressed by the State in the form of regulations and orders which may continue to result in differing opinions concerning such matters;
- c) Although the City’s zoning code has prohibited commercial cannabis activities, such businesses have been known to operate in Novato and there may be some currently operating illegally within the City;

- d) The City is considering how to most effectively address zoning regulations applicable to commercial cannabis activities and cultivation of medicinal and non-medicinal marijuana in the City in order to prevent the potential impacts such facilities may have on the public health, safety and/or welfare, and particularly the impact they may have on the City's youth; and
- e) Were commercial cannabis activities, such as MMD's, to open in the City because the moratorium was not in place while the City was studying whether to adopt policies, restrictions, ordinances and regulations, those policies, restrictions, ordinances and regulations, if enacted, would be rendered ineffective and the purpose of conducting such studies would be defeated.

Duration of Moratorium

The urgency ordinance currently in effect was originally valid for a period of 45-days and ended on December 29, 2017. The moratorium was extended for 10 months and 15 days, which extends to November 13, 2018 in the case of Ordinance No. 1629. Thereafter, an urgency ordinance may be extended for one year. After the second extension no further extension may be made. A four-fifths vote is required to extend an urgency ordinance.

Pursuant to Government Code Section 65858 a local legislative body is required to issue a written report describing the measures being taken to alleviate the conditions which led to the adoption of the urgency ordinance. This report must be issued ten days prior to the expiration of the interim urgency ordinance or any subsequent extension. The following discussion represents the City's report to satisfy the reporting requirements of Government Code Section 65858.

Actions Taken to Alleviate the Conditions Leading to Moratorium

The facts and conditions giving rise to the adoption of Novato's urgency ordinances continue to exist at the present time. These facts and conditions are described in Novato Ordinance No. 1629 which is attached for reference. The State has begun issuing licenses for commercial cannabis activities which has prompted many other cities to take such action as necessary to limit the threat of additional commercial cannabis activities establishing themselves without zoning or other local regulations in place. As other cities in the area do so, the threat grows that a City such as Novato without such regulations would see the establishment of unlicensed and illegal commercial cannabis activities that would otherwise be regulated in other nearby areas. The City Council has introduced a regular ordinance which is scheduled for adoption to regulate indoor personal cultivation and prohibit outdoor personal cultivation for both medicinal and non-medicinal purposes. Therefore, the provisions of the current urgency ordinance relating to personal cultivation of medicinal cannabis will no longer be necessary upon adoption of the personal cultivation ordinance; and so, they are not included in the moratorium extension that will be considered by the City Council on October 9, 2018.

The City has begun the process of creating a permanent ordinance to replace the current

moratorium. The City has taken the following action in its attempt to understand community opinion and feasibility of the cannabis industry within city limits. The City conducted three (3) stakeholder meetings, three (3) community outreach workshops, one (1) online and paper survey to determine public opinion, and hired HdL companies, a consulting firm, to assist in hosting events, analysis of survey as well as fiscal and staff impact resulting from a potential cannabis ordinance. Initial findings have been presented to Council and work has begun creating a draft ordinance. Final recommendations and findings are being drafted for presentation to the Planning Commission as well as the City Council for action.

City staff has been examining various legislative and other options that may be available to the City by which the City could regulate and/or restrict the establishment and operation of commercial cannabis activities and indoor and outdoor cultivation. Previously, the State issued emergency licensing regulations for commercial cannabis activities and the City is beginning to study and analyze these. Such regulations establish rules and standards that will be applicable to any commercial cannabis activity within the city which include but are not limited to all of the following subjects: license applications, licensing requirements, temporary licensing, transportation, retail activities, deliveries, testing, disposal of waste, and distribution of cannabis. Accordingly, the examination of appropriate regulations and restrictions to be established for commercial cannabis and cultivation activities within the City of Novato is on-going, but City staff is not ready to submit to the City Planning Commission and/or Council any proposed regulations or restrictions and needs additional time for that purpose. The adoption of such regulations or restrictions intersects with a considerable body of case, statutory, and regulatory law, all of which must be analyzed and understood in order to fashion and propose policies and laws that the City can apply and enforce in a pragmatic and effective manner.

The complexities involved in analyzing and proposing zoning and other local regulations that will meet legal muster under case, statutory, and new regulatory requirements remain to be studied, addressed and analyzed in order to devise and establish appropriate local regulations for the benefit and protection of the public.

ATTACHMENT

1. City of Novato Ordinance No. 1629