



PLANNING COMMISSION

Wednesday, October 26, 2022
Regular Meeting - 7:00 PM
City Hall – City Council Chambers
425 Webster Street, Colusa, CA 95932

AGENDA

The public may address the Commission on any agenda item during the Commission’s discussion of that item, not to exceed three (3) minutes. We ask that the speaker kindly be recognized by the Planning Commission Chair before speaking and be limited to one comment, per item.

Chair – Ryan Codorniz
Vice Chair – Ed Duncan
Commissioner – John Martin
Commissioner - Thomas Roach
Commissioner - Vicky Willoh

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS *The Planning Commission may read / address comments on any item concerning subject matter that is within the Planning Commission’s jurisdiction. No action may be taken on items not posted on the agenda, other than to briefly respond, refer to staff, or to direct that an item be placed on a future agenda.*

PUBLIC HEARING

1. Subject: A Resolution recommending the City Council adopt an Ordinance approving a Development Agreement between the City of Colusa and XO Cannabis/Organic Crop Solutions LLC, Patrick Griffith.

Recommendation: Staff recommends the Planning Commission adopt the Resolution recommending City Council approval of an Ordinance of the City Council approving a Development Agreement between the City of Colusa and XO Cannabis/Organic Crop Solutions LLC relative to the operation of a Cannabis Manufacturing Facility located at 2851 Niagara Avenue in Colusa

2. Subject: A Resolution recommending City Council review and potential approval of changes to the outdated Articles of the Municipal Code, Article 32.11, 12D, 12F, Ordinance 551 Article 21.5, 21.5.01,21.5.06,21.05.07,21.5.09,21.5.13.

Recommendations: Staff recommends Planning Commissioners review and fully understand the proposed amendments and additions for approval at Planning Commission and Council levels and;

Planning Commission to adopt the Resolution recommending the Colusa City Council adopt changes to Ordinance 519-551 and Articles 32.11,12D,12F,21.5,21.5.01,21.5.06,21.05.07,21.5.09,21.5.13

PUBLIC COMMISSION MATTERS *Discussion of current Planning Department projects.*

ADJOURNMENT



SHELLY KITTLE, CITY CLERK

Americans with Disabilities Act

In compliance with the Americans with Disabilities Act, persons requiring accommodations for a disability at a public meeting should notify the City Clerk at least 48 hours prior to the meeting at (530) 458-4740 in order to allow the City sufficient time to make reasonable arrangements to accommodate participation in this meeting.

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City of Colusa California

STAFF REPORT

DATE: October 26th, 2022
TO: Planning Commission
FROM: Jesse Cain City Manager

AGENDA ITEM:

Subject: Resolution of the planning commission recommending to Council to adopt an ordinance of the City Council approving a development agreement between the City of Colusa and XO Cannabis/Organic Crop Solutions LLC, Patrick Griffith.

Recommendation: Staff recommends planning commission to recommend to Council to adopt an ordinance of the City Council approving a development agreement between the City of Colusa and XO Cannabis/ Organic Crop Solutions LLC, Patrick Griffith.

BACKGROUND ANALYSIS:

XO Cannabis/Organic Crop Solutions LLC has already been approved by the City of Colusa Planning Commission and the City of Colusa City Council located at 2959 Davison Court. Xo Cannabis/Organic Crop solutions is now moving to 2851 Niagara Ave and to build a new metal building at 2,400 sq ft. The City of Colusa's current cannabis ordinance requires any new locations to go through the original process of approval. If approved XO Cannabis/Organic Crop Solutions Current Development Agreement will no longer be valid. The project consents of cultivation drying and packaging. They are aware that they must have a smell mitigation plan and that smell is a major concern. This project will generate 1-3 jobs as this is a small project. The proposed location business type and activities conforms with ordinance 519

BUDGET IMPACT: none

STAFF RECOMMENDATION: Approve Resolution 2022-.

ATTACHMENT:
Resolution 2022-

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY OF COLUSA PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE OF THE CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COLUSA AND XO CANNABIS/ ORGANIC CROP SOLUTIONS, LLC RELATIVE TO THE OPERATION OF A CANNABIS MANUFACTURING FACILITY LOCATED AT 2851 NIAGARA AVE IN COLUSA.

WHEREAS, the City has received an application from XO CANNABIS/ ORGANIC CROP SOLUTIONS, LLC for development of a cannabis manufacturing facility, and

WHEREAS, the City has established City Municipal and Zoning Code regulations for the orderly development of such uses, and

WHEREAS, all procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 et seq., and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, §15000 et seq. have been satisfied as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

WHEREAS, the Planning Commission has duly called, advertised, and conducted a Public Hearing required by law concerning proposed, said municipal code and zoning amendments; and

WHEREAS, the City of Colusa Planning Commission has considered public and staff input.

NOW, THEREFORE, BE IT RESOLVED by the City of Colusa Planning Commission, that the Planning Commission recommends that the City Council of the City of Colusa adopt an ordinance of the City Council of the City of Colusa approving a Development Agreement by and between the City of Colusa and XO Cannabis/ ORGANIC CROP SOLUTIONS, LLC.

THE FOREGOING RESOLUTION was duly introduced and passed at a regular meeting of the City of Colusa Planning Commission held on the 26th day of October 2022, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

Signed and approved as to form by me on this 26th day of October 2022

ATTEST: _____
Planning Commission Chair, Codorniz

City Manager, Jesse Cain

ATTACHMENT 1 – Ordinance for Development Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Colusa
425 Webster Street
Colusa, CA 95932

Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2022 (the "Execution Date"), by and between the **CITY OF COLUSA, a California municipal corporation** ("City") and XO Cannabis/Organic Crop Solutions, LLC ("Owner"). City and Owner are sometimes referenced together herein as the "Parties." In instances when a provision hereof applies to each of the Parties individually, either may be referenced as a "Party." The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

RECITALS

- A. The State of California enacted California Government Code Sections 65864 *et seq.* ("Development Agreement Statutes") to authorize municipalities to enter into development agreements with those having an interest in real property to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development in connection with the development of real property within their jurisdiction.
- B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the developer, and to meet certain public purposes of the local government.
- C. Owner intends to occupy an existing 2,400-sq-ft metal building on 1.22 acres of developed industrial property located at 2851 Niagara (22-01 #2) for the purposes of cannabis cultivation and distribution. The site is more fully described in Exhibit A and shown on the map in Exhibit B.
- D. Owner intends to operate a Cannabis Manufacturing Facility as defined in the City of Colusa City Code. Such Cannabis Manufacturing Facilities shall operate in accordance with the California State cannabis laws, creating a unified regulatory structure for adult use and medical cannabis. Prior to operating a cannabis facility,

Owner shall be required to obtain a special use permit and regulatory permit from City. Owner and Tenants (if any) shall collectively be referred to in this Agreement as Developers.

- E. Ultimately, Developer intends to obtain all necessary state licenses issued pursuant to MAUCRSA to operate the Cannabis Manufacturing Facility at the Site once such licenses are being issued.
- F. Developers presently intend to develop and open a Cannabis Manufacturing Facility on the Site consistent with the California Marijuana Laws and Project Approvals (known as the “Project” as further described below).
- G. On July 18, 2017, City adopted Ordinance 519 permitting Cannabis Manufacturing Facilities in strict compliance with the applicable California laws regulating cannabis cultivation, manufacturing, processing, and distribution under certain conditions and provisions. Currently, City is updating the City Code to comply with new State cannabis regulations that are in effect as of the date of this Agreement.
- H. City and Owner have agreed that, as a condition of allowing the Project, as defined herein, and due to the unique circumstances of the proposed Project, Owner shall pay to the City quarterly fees based on the gross revenue of the Cannabis Manufacturing operations as hereinafter defined, which fees shall abate if and when the City adopts a tax on Cannabis Manufacturing Facilities.
- I. The City of Colusa, as “Lead Agency,” has determined that —based upon CEQA Guidelines Section 15061 (b) (3)— the Project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- J. City has given public notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to California Government Code §65867. City has found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in the City’s General Plan, zoning code and municipal ordinances.
- K. City, in entering into this Agreement, acknowledges that certain City obligations hereby assumed shall survive beyond the terms of the present Council members, that this Agreement will serve to bind City and future Councils to the obligations hereby undertaken, and that this Agreement shall limit the future exercise of certain governmental and proprietary powers of City. By approving this Agreement, the Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than defer its actions to some undetermined future date.

The terms and conditions of this Agreement have undergone extensive review by City and the Council and have been found to be fair, just and reasonable. City has concluded that the pursuit of the Project will serve the best interests of its citizens and that the public health, safety and welfare are best served by entering into this obligation. Owner has represented to City that it would not consider or engage in the Project absent City approving this Agreement; *i.e.*, assuring Owner that it will enjoy the development rights.

- L. The City agrees that Owner's land use entitlements for the Project shall vest for the term of this Agreement as described below.
- M. After conducting a duly noticed hearing on October 26, 2022, the Planning Commission of the City reviewed, considered and voted , passed a resolution recommending City Council approval of an Ordinance approving this Agreement.
- N. After conducting a duly noticed hearing on, November 15, 2022, and after independent review and consideration, the City Council approved the execution of this Agreement. The City Council found the Project: consistent with the objectives, policies, general land uses, and programs specified in the general plan; compatible with the uses authorized in the zoning code; is in conformity with good land use practices; will not be detrimental to the health, safety and general welfare of the City; and is in the best interest of the City of Colusa and its residents.
- O. Production Fee. "Production Fee" shall mean any cannabis cultivation, processing, testing, distribution, and transportation of cannabis and cannabis products.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Binding Effect of Agreement. The Parties agree that the Recitals above are true and correct and intend to be bound by same; the Parties further agree to the incorporation by reference herein of said Recitals, together with all definitions provided and exhibits referenced therein. Except as otherwise provided in Section 15 of this Agreement, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants which run with the Site. In order to provide continued notice thereof, the Parties will record this Agreement with the Colusa County Recorder. The word "Owner" as previously defined and used herein shall include successor owners, apart from government or quasi-public agencies, of any portion of the Site. Should the size or orientation of any Site component specified above be changed in minor respects, *e.g.*, changed by a lot line adjustment, this Agreement shall not thereby be deemed to have been affected or invalidated, but the rights and obligations of the Parties and their successors shall remain as provided herein.

2. Relationship of the Parties. It is hereby specifically understood and acknowledged that the Project is a private project and that neither City nor Developers will be deemed to be the agent of the other for any purpose whatsoever. City and Developers hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developers joint venturers or partners.

3. Term. Except as otherwise specified herein, the term of this Agreement (the "Term") is 10 years from the date the Owner begins commercial operation at the Project Site ("Operation Date"). The Operation Date shall be no later than 12 months following the Execution Date. The Term shall generally be subject to earlier termination or extension as hereinafter provided.

3.1 Term Extension – Third Party Issues. Notwithstanding the Parties' expectation that there will be no limit or moratorium upon the Project's development or the issuance of building or other development related permits (a "Development Limitation") during the Term, the Parties understand and agree that various third parties may take action causing a *de facto* Development Limitation. Consequently, the Term shall be extended for any delay arising from or related to any of the potential Development Limitations that follow in the subsections below for a time equal to the duration of that delay occurring during the Term. No Development Limitation may arise or result from an action or omission by Developers.

3.1.1 Litigation. Any third party-initiated litigation that arises from or is related to any City action or omission with respect to this Agreement or any subsequent City approval required in connection with the Project's development, or third party initiated litigation having the actual effect of delaying the Project's development. This extension period related hereto shall include any time during which appeals may be filed or are pending.

3.1.2 Government Agencies. Any delay arising from or related to the act(s) or omission(s) any third-party governmental agency, quasi-public entity or public utility, and beyond the reasonable control of Developers.

3.1.3 Force Majeure. Any delay resulting from riot, war, acts of terrorism, an event during the Term creating radioactive or toxic/hazardous contamination, a catastrophic earthquake, flood, fire or other physical natural disaster, excluding weather conditions regardless of severity, strikes or industrial disputes at national level effecting development involved personnel not employed by Developers, their subcontractors or suppliers and effecting an essential portion of the Project's development, excluding any industrial dispute that is specific to development taking place as a part of the Project.

3.2 Term Extensions. The Term of this Agreement will be extended for seven additional years upon a determination of the City Council, by way of resolution of the City Council acted on at a regularly scheduled meeting, that both of the conditions listed in subparts 3.2.1 and 3.2.2 below have been fully satisfied are the Owner is in full compliance:

3.2.1. No Default by Owner. Owner shall not be in default with respect to any provision of this Agreement or any subsequent agreement or understanding between the Parties arising from or related to this Agreement, having received notice from City of said default per this Agreement, or if Owner did in fact default as to this Agreement, upon notice from City, that Owner did cure said default during the period to cure provided herein to City's satisfaction.

3.2.2 Finding of Community Compatibility. The City Council shall review the operations of Owner prior to granting an extension of the term of this Agreement and make a finding that the Cannabis Manufacturing, notwithstanding that the Cannabis Manufacturing may not be in precise technical compliance with the issued regulatory permit and special use permit, continue to be compatible with surrounding land uses and are not detrimental to the public health, safety and general welfare.

3.2.3. Mutual Agreement of Parties. In addition to the process listed above for a seven-year term extension, this Agreement's Term may be extended by mutual agreement of the Parties and formal amendment of this Agreement.

3.3 Termination of Agreement. Upon the termination of this Agreement, either by expiration or otherwise, Developers shall have no right to engage in Cannabis Manufacturing at the Project Site, except as may otherwise be allowed by City ordinance, law or separate development agreement.

4. Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

4.1. Certified Report. "Certified Report" shall mean a detailed document prepared by Developers on a form acceptable to the City's Director of Finance to report to the City of the Cannabis Manufacturing distribution and sales, as defined herein, in the Project during each Operational Quarter, as defined herein. Each Certified Report shall be certified as true and correct by a duly authorized officer of Owner.

4.2. Production Fee. "Production Fee" shall mean a quarterly fee remitted to the City by Owner based on the gross wholesale receipts of its operations, as defined below, in the amount of 3% of gross sales from operations.

4.3. Certification of Non-Income Tax Exemption. Owner certifies that Owner is not income tax exempt under State or Federal Law and that Owner will not file for such an exemption from the Internal Revenue Service or the Franchise Tax Board. Owner will also require all Tenant(s) to certify that Tenant(s) are not income tax exempt under State or Federal Law and will not file for such an exemption.

4.4. Land Use Regulations. "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction

and initial occupancy standards and specifications applicable to the Project. “Land Use Regulations” do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

4.4.1. The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

4.4.2. Other than as provided in this Agreement, taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Developer is paying any fee or providing any improvement pursuant to this Agreement;

4.4.3. The control and abatement of nuisances.

4.4.4. The granting of encroachment permits and the conveyance of rights and interests which provides for the use of, access to or the entry upon public property, as may be approved by mutual agreement between Developer and City; and

4.4.5. The exercise of the power of eminent domain.

4.5. “Existing Land Use Regulations” means all Land Use Regulations in effect as of the approval date of this Agreement, including the Project Approvals.

4.6. Operational Quarter. “Operational Quarter” shall mean any calendar quarter during which any gross revenue of the Project is produced.

5. Fee Payments by Owner. In consideration of City’s entering into this Agreement and authorizing the development and operation of the Project, the requirements for City services created by the Project, the City ensuring Developers compliance with this Agreement, California medical marijuana laws and the City’s municipal ordinances, throughout the Term of this Agreement, Owner shall make the following payments to City:

5.1. Production Fee Payments by Owner. Quarterly payments of the Production Fee by Owner to the City as specified in Section 6 herein. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement, but the Production Fee under this Agreement shall cease if any City-wide tax is imposed specifically on Cannabis Manufacturing operations.

6. Payment Procedures. The following payment procedures shall apply during the operation of the Project:

6.1. Remittance of Fees; Certified Reports. Within thirty (30) calendar days following the end of each quarterly period during the Term of this Agreement, Owner shall submit the Certified Report to the City’s Finance Director and a payment for the Production and Manufacturing, Cultivation and Distribution Fees for that Operational Period as identified in the Certified Report. Owner shall pay Fees to the City on a quarterly basis without exception. Any material misstatement or misrepresentation in the Certified

Report and any failure to pay Fees when due shall constitute events of default by Developers subject to the default provisions of this Agreement.

6.2. Maintenance of Records. Developers shall maintain complete records of their operations to substantiate and document the content of each Certified Report. Such records shall include, without limitation, invoices and payments taken by Tenants and/or any operator of the facility. Developers shall maintain such records in a form and location reasonably accessible to the City, following reasonable notice to Developers and/or any operator, for a period of at least five (5) calendar years following Owner's submission of the Certified Report to which the records apply.

6.3. Audit. Within ninety (90) calendar days following the end of each Operational Quarter, the City may conduct an audit or arrange for a third-party independent audit, at Developers' expense, of Developers records regarding Certified Reports and the Fees. The City's Finance Director shall provide at least seven (7) business days written notice of the commencement of such audit to Developers and shall reasonably attempt to schedule the audit so as to reduce the impact on Tenants' operations as much as is feasible. Developers shall cooperate with the City in completing the audit. If the audit reveals that Owner has underpaid the Fees, Owner shall pay such underpaid amounts to the City within thirty (30) calendar days of receipt of written notice from the City's Director of Finance in addition to all costs of the audit, including city staff time and outside consultants. If the audit reveals that the Owner has overpaid any amount of the Production or Nursery Fees, City shall provide written notification to Owner and shall credit such amount against Owner's subsequent quarterly payment of Fees.

7. Covenants of Owner. During the Term of this Agreement, Owner hereby covenants and agrees with the City as follows:

7.1. Implementation. Owner shall use commercial reasonable efforts to pursue the implementation of the Project as expeditiously as feasible, in the form approved by the City, subject to all applicable laws, this Agreement, the Project Approvals and the Municipal Code.

7.1.1. Developer shall comply with all applicable state regulations governing its manufacturing operations. If permanent regulations are not in place at the time operations commence, Developer shall comply with whatever temporary, interim, or urgency regulations that are in effect pending the State's consideration and adoption of permanent regulations.

7.2. Enhanced Design Requirement. Owner shall submit a design plan for the building and site, for review and approval by the Planning Director, which shall incorporate at a minimum, security fencing and landscaping improvements consistent with the policies in the City's General Plan.

7.3. Maintain & Operate Project. Owner and Tenants shall maintain and operate the Project on the Site, once constructed, throughout the Term of this Agreement, in accordance with the Project Approvals and all City, and State laws.

7.4. Hold Harmless. Owner shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the “Indemnified Parties”) harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys’ fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from the Project, this Agreement, the approval of the Project, and the activities of Developers, their members, officers, employees, agents, contractors, invitees and any third parties on the Site, from and against any challenges to the validity of this Agreement or other Project Approvals. The obligations of Owner under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

8. Covenants of City. During the Term of this Agreement, City hereby covenants and agrees with Owner as follows:

8.1. Expeditious Services. City shall process applications and address questions and concerns raised by Developers representatives at the “counter” at City Hall as expeditiously as reasonably possible. Upon Owner’s request, or if, in an exercise of City’s own discretion, City staff determines that it cannot comply with this section, City shall expeditiously engage the services of private contract planners, plan checkers or inspectors (“Private Contractors”) to perform such services as may be necessary to assist in processing the project plans as described herein. Compensation of such Private Contractors shall be at Owner’s sole cost and expense, inclusive of any administrative cost to City of integrating services by Private Contractors into the project’s development processing. Owner shall pay such costs and expenses of Private Contractors via reimbursement to City, per City’s applicable policies and procedures. City shall have absolute discretion in the selection of such Private Contractors.

8.2 Vested Rights. During the Term of this Agreement, Owner shall have the vested right and entitlement to develop and operate the Project in accordance with the Existing Land Use Ordinances, in addition to any Cannabis Manufacturing Operating Standards adopted by the City Council, which may be amended at the City’s discretion. Parties acknowledge that neither the City nor the Owner can at this time predict when or the rate at which or the order in which parts of the Project will be developed. Owner shall have the vested right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its business judgment, provided that Owner is in compliance with the Project Approvals.

8.3 Building Permits and Other Approvals and Permits. Subject to (a) Owner’s compliance with this Agreement, the Project Approvals the Existing Land Use Ordinances, the Building Ordinances, and Operating Standards; and (b) payment of the usual and customary fees and charges of general application charged for the processing of such applications, permits and certificates and for any utility connection, or similar fees and charges of general application, the City shall process and issue to Developers promptly upon application therefore all necessary use permits, building permits, occupancy certificates, regulatory permits, licenses and other required permits for the construction, use and occupancy of the Project, or any portion thereof, as applied for,

including connection to all utility systems under the City's jurisdiction and control (to the extent that such connections are physically feasible and that such utility systems are capable of adequately servicing the Project).

8.4 Procedures and Standards. The standards for granting or withholding permits or approvals required hereunder in connection with the development of the Project shall be governed as provided herein by the standards, terms and conditions of this Agreement and the Project Approvals, and to the extent not inconsistent therewith, the Existing Land Use Ordinances, but the procedures for processing applications for such permits or approvals (including the usual and customary fees of general application charged for such processing) shall be governed by such ordinances and regulations as may then be applicable.

9. Effect of Agreement.

9.1 Grant of Right. This Agreement shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full. The Parties acknowledge that this Agreement grants Owner the right and entitlement to develop the Project and use the land pursuant to specified and known criteria and rules as set forth in the Project Approvals and Existing Land Use Ordinances, and to grant the City and the residents of the City certain benefits which they otherwise would not receive.

9.2 Binding on City/Vested Right of Owner. This Agreement shall be binding upon the City and its successors in accordance with and subject to its terms and conditions notwithstanding any subsequent action of the City, whether taken by ordinance or resolution of the City Council, by referenda, initiative, or otherwise. The Parties acknowledge and agree that by entering into this Agreement and relying thereupon, the Owner has obtained, subject to the terms and conditions of this Agreement, a vested right to proceed with its development of the Project as set forth in the Project Approvals and the Existing Land Use Ordinances, and the timing provisions of Section 3, and the City has entered into this in order to secure the public benefits conferred upon it hereunder which are essential to alleviate current and potential problems in the City and to protect the public health, safety and welfare of the City and its residents, and this Agreement is an essential element in the achievement of those goals.

9.3 Future Conflicting Local Laws. If any City law, including ordinances, resolutions, rules, regulations, standards, policies, conditions, and specifications (collectively "City Laws") are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with this Agreement, such City Law shall not apply to the Project Site or Project. The Parties, however, acknowledge that the City's approval of this Agreement and the City Approvals are legislative actions subject to referendum.

9.3.1 Without limiting the generality of the foregoing, no moratorium or other limitation whether relating to the rate, timing, phasing, or sequencing of development affecting subdivision maps, building permits, or other Subsequent Approvals shall apply to the Project. Owner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a

moratorium or to impose any other limitation that may affect the Project.

10. Specific Criteria Applicable to Development of the Project.

10.1 Applicable Ordinances. Except as set forth in the Project Approvals and subject to the provisions of Section 10.2 below, the Existing Land Use Ordinances shall govern the development of the Site hereunder and the granting or withholding of all permits or approvals required to develop the Site; provided, however, that (a) Owner shall be subject to all changes in processing, inspection and plan-check fees and charges imposed by City in connection with the processing of applications for development and construction upon the Site so long as such fees and charges are of general application and are not imposed solely with respect to the Project Site, (b) Owner shall abide by the Building Ordinances in effect at the time of such applications, (c) Development Impact Fees to be paid by Owner shall be those in effect at the time permits are issued subject to those fees, and (d) development shall be consistent with current Operating Standards.

10.2 Amendment to Applicable Ordinances. Any change to the Existing Land Use Ordinances that conflicts with the Project Approvals shall nonetheless apply to the Project if, and only if (i) it is consented to in writing by Owner in Owner's sole and absolute discretion; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law; (iv) it consists of changes in, or new fees permitted by, Section 4.1; or (v) it is otherwise expressly permitted by this Agreement. The Parties anticipate that the City shall subsequently adopt Operating Standards that govern this type of use, which Regulations, and any amendments thereto, shall apply to the Project.

10.3 Applicability of Zoning Amendments. In the event that the City zoning ordinance is amended by the City in a manner which provides more favorable site development standards for the Project Site or any part thereof than those in effect as of the Effective Date, Owner shall have the right to notify the City in writing of its desire to be subject to all or any such new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council, such new standards shall become applicable to the Project. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall continue to apply to the Project as provided above, but Owner may notify City in writing of its desire to be subject to all or any such amended new standards and City shall agree in the manner above provided to apply such amended new standards to the Project.

11. Permitted Delays; Supersedure by Subsequent Laws.

11.1 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Owner and City shall be excused from performance of their obligations hereunder during any period of delay caused by acts of mother nature, civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, any referendum elections held on the Enacting Ordinance, or the Land Use Ordinances, or

any other ordinance effecting the Project or the approvals, permits or other entitlements related thereto, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder (collectively, "Laws"), orders of courts of competent jurisdiction, or any other cause similar or dissimilar to the foregoing beyond the reasonable control of City or Owner, as applicable. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The time of performance of such obligations shall be extended by the period of any delay hereunder.

11.2 Supersedure of Subsequent Laws or Judicial Action.

11.2.1 The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new Law or decision issued by a court of competent jurisdiction (a "Decision"), enacted or made after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement. Promptly after enactment of any such new Law, or issuance of such Decision, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner and City shall have the right to challenge the new Law or the Decision preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended, in accordance with Section 2.1 above, for a period of time equal to the length of time the challenge was pursued, to extent such challenge delayed the implementation of the project.

12. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Developers. It is anticipated due to the term of this Agreement that refinements to the approvals may be appropriate with respect to the details of performance of the City and the Developers. To the extent allowable by law, the Developers shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Developers finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized upon consultation with the Developers, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby

authorized to execute any operating Memoranda hereunder without further City Council action.

13. CEQA. All procedures of the California Environmental Quality Act (“CEQA”), California Public Resources Code §21000 *et seq.*, and the CEQA guidelines, title 14 of the California Code of Regulations, chapter 3, §15000 *et seq.* have been satisfied.

14. Building Permits. Nothing set forth herein shall impair or interfere with the right of City to require the processing of building permits as required by law relating to any specific improvements proposed for the Project pursuant to the applicable provisions of the City’s municipal code, inclusive of such California and International Codes as have been adopted in accord therewith, that are in effect at the time such permits are applied for; provided, however, no such permit processing shall authorize or permit City to impose any condition on and/or withhold approval of any proposed improvement the result of which would be inconsistent with this Agreement.

15. Assignment and Transfer of Rights. Except as otherwise provided in this Section, the burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors-in-interest of the Parties and constitute covenants that run with the Site. Owner, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, shall not, at any time during the Term, assign, convey, lease, sell or otherwise transfer all or any portion of its rights under this Agreement (“Assignable Rights”) to a third party, a subordinate entity, or a related entity (make an “Assignment”) without the prior written consent of City in each instance, which consent which consent will not be unreasonably withheld, provided the entity receiving the Assignment is qualified to conduct business under all City codes and ordinances, and obtains all required state and City permits. Any assignment in violation of this Section will be void. No permitted assignee of this Agreement may further assign this Agreement without City’s prior written consent.

16. Review for Compliance.

16.1 Periodic Review. Pursuant to CGC §65865.1, City shall engage in an annual review this Agreement, on or before the anniversary of the date of execution, in order to ascertain Owner’s good faith compliance with its terms (the “Periodic Review”). In the event City fails to formally conduct such annual review, Owner shall be deemed to be in full compliance with the Agreement.

17. Amendment or Cancellation. This Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties or in the manner provided in CGC §65865.1 or CGC §65868 and subsection 3.2 above.

17.1 Provide Notice. Provide the other Party with written notice of such State or Federal law or regulation, a copy of such law or regulation and a statement identifying how such law regulation conflicts with the provisions of this Agreement.

17.2 Meet and Confer. Upon notice by one Party to another as to preemption or frustration of this Agreement by law or regulation, the Parties shall promptly meet and confer in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such applicable Federal or State law or regulation. If the Parties cannot agree on a manner or method to comply with such Federal or State law or regulation, the Parties may, but shall not be required to, engage in alternative dispute resolution.

18. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by telecopier or facsimile (“Fax”) machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Colusa
 425 Webster Street
 Colusa CA 95932
 Attention: City Manager

With copy to: Jones & Mayer, City Attorney

8150 Sierra College Blvd., Suite 190
 Roseville California 95661
 Attention: Ryan R. Jones, Esq.

If to Owner: XO Cannabis/ Organic Crop Solutions LLC
 C/O Patrick Griffith
 2851 Niagara Ave.
 Colusa, CA 95932

Notices sent in accordance with this Section shall be deemed delivered upon the: **(a)** date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); **(b)** date of actual receipt (if personally delivered by other means); **(c)** date of transmission (if sent by email or telecopier, so long as sender receives actual confirmation that the transmission was received); or **(d)** date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section.

19. Breach and Remedies. Notwithstanding any provision of this Agreement to the contrary, Developers shall not be deemed to be in default under this Agreement with respect to any obligation owed solely to City, and City may not terminate or modify

Developers' rights under this Agreement, unless City shall have first delivered a written notice of any alleged default to Owner that specifies the nature of such default. If such default is not cured by Owner within sixty (60) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, Owner fails to commence to cure the default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, City may terminate Owner's rights under this Agreement. Default by any Assignee or Owner's successor in interest shall affect only that portion of the Site owned by such Assignee or successor, and shall not cancel or diminish in any way Owner's rights with respect to any portion of the Site not owned by such Assignee or successor. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by Owner against City for an alleged breach of this Agreement shall be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement and not by a claim or action for monetary damages.

20. Entire Agreement. This Agreement and the Exhibits herein contain the entire integrated agreement among the Parties. The Parties intend that this Agreement state their agreement in full to each and every one of its provisions. Any prior agreements, understandings, promises, negotiations or representations respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, are agreed by all Parties to be null and void.

21. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. Attorneys' Fees. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

23. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

24. Execution of Agreement. The Parties shall sign this Agreement on or within five (5) business days of approval.

25. Estoppel Certificate. City shall, at any time and from time to time within ten (10) days after receipt of written notice from Owner so requesting, execute, acknowledge and deliver to Owner a statement in writing: **(a)** certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and **(b)** acknowledging that there are no uncured defaults on the part of Owner hereunder or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Site. Upon Owner's written request, City shall issue a certificate of performance evidencing completion of any of Owner's obligation(s) under this Agreement.

26. Encumbrances on Real Property.

26.1 Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Site or any portion thereof or any improvements thereon then owned by such person with any mortgage, deed of trust or other security device ("Mortgage") securing financing with respect to the Site or such portion. City acknowledges that the lenders providing such financing may require certain modifications, and City agrees, upon request, from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification. Any mortgagee or trust deed beneficiary of the Site or any portion thereof or any improvements thereon and its successors and assigns ("Mortgagee") shall be entitled to the following rights and privileges.

26.2 Lender Requested Modification/Interpretation. City acknowledges that the lenders providing financing to Developers may request certain interpretations and

modifications of this Agreement. City therefore agrees upon request, from time to time, to meet with the Developers and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of this Agreement relative to modifications or amendments.

26.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Site or any portion thereof by a Mortgagee (whether pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall be subject to all of the terms and conditions of this Agreement.

26.4 Mortgagee Not Obligated. Notwithstanding the provisions of Section 26.2, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Owner or other affirmative covenants of Owner hereunder, or to guarantee such performance, except that to the extent that Mortgagee opts to receive the benefits of the Agreement, including the right to operate, any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder. No Mortgagee will be liable for any monetary defaults arising prior to its acquisition of title to the Site or any portion thereof. Uncured monetary defaults will terminate the Agreement and Mortgagee's right to operate.

26.5 Written Notice of Default. Each Mortgagee shall be entitled to receive written notice from City of any default by Owner under this Agreement, if such default is not cured within thirty (30) days, provided such Mortgagee has delivered a written request to City for such notice. Each Mortgagee shall have a further right, but not the obligation, to cure such default for a period of thirty (30) days after receipt of such notice of default. Any non-curable defaults of Owner of any obligation owed solely to City arising prior to Mortgagee's acquisition of title to the Site or any portion thereof shall be waived; provided, however, the non-payment of money shall not be deemed a non-curable default.

27. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and, subject to City's written consent, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

28. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Superior Court of Colusa County, California.

29. Mutual Covenants. The covenants contained herein, including those contained in the Recitals herein, are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

30. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement (“Successors”). Furthermore, the rights and remedies, together with the benefits and burdens of this Agreement of each Party to this Agreement shall be coextensive with those of its Successors. All provisions of this Agreement shall be enforceable as equitable servitude’s and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Site: (a) is for the benefit of and is a burden upon every portion of the Site; (b) runs with the Site and each portion thereof; and, (c) is binding upon each Party and each Successor during ownership of the Site or any portion thereof. From and after recordation of this Agreement, the Agreement shall impute notice to all persons and entities in accord with the recording laws of this State.

31. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Successors and Assignees. No other person or entity shall have any right of action based upon any provision of this Agreement.

32. Waiver. Failure by a Party to insist upon the strict performance of any of this Agreement’s provisions by the other party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party’s right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

33. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

34. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

35. Headings. The headings in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

36. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

37. Jointly Drafted. It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

38. Independent Legal Counsel. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

39. Further Cooperation. The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

40. Enforceability. This Agreement shall not become binding and shall have no force and effect whatsoever until such time as it has been fully executed by and delivered to all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

Signatures on Next Page

“CITY”

CITY OF COLUSA, CA
a California Municipal Corporation

Date: _____, 2022

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Ryan R. Jones, Esq.
City Attorney

“Authorized Agent”

Patrick Griffith

By: _____

Date: _____, 2022

By: _____

By: _____

Approved as to form:

By: _____

Attorney for Owner

ACKNOWLEDGEMENT
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

ACKNOWLEDGEMENT
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"

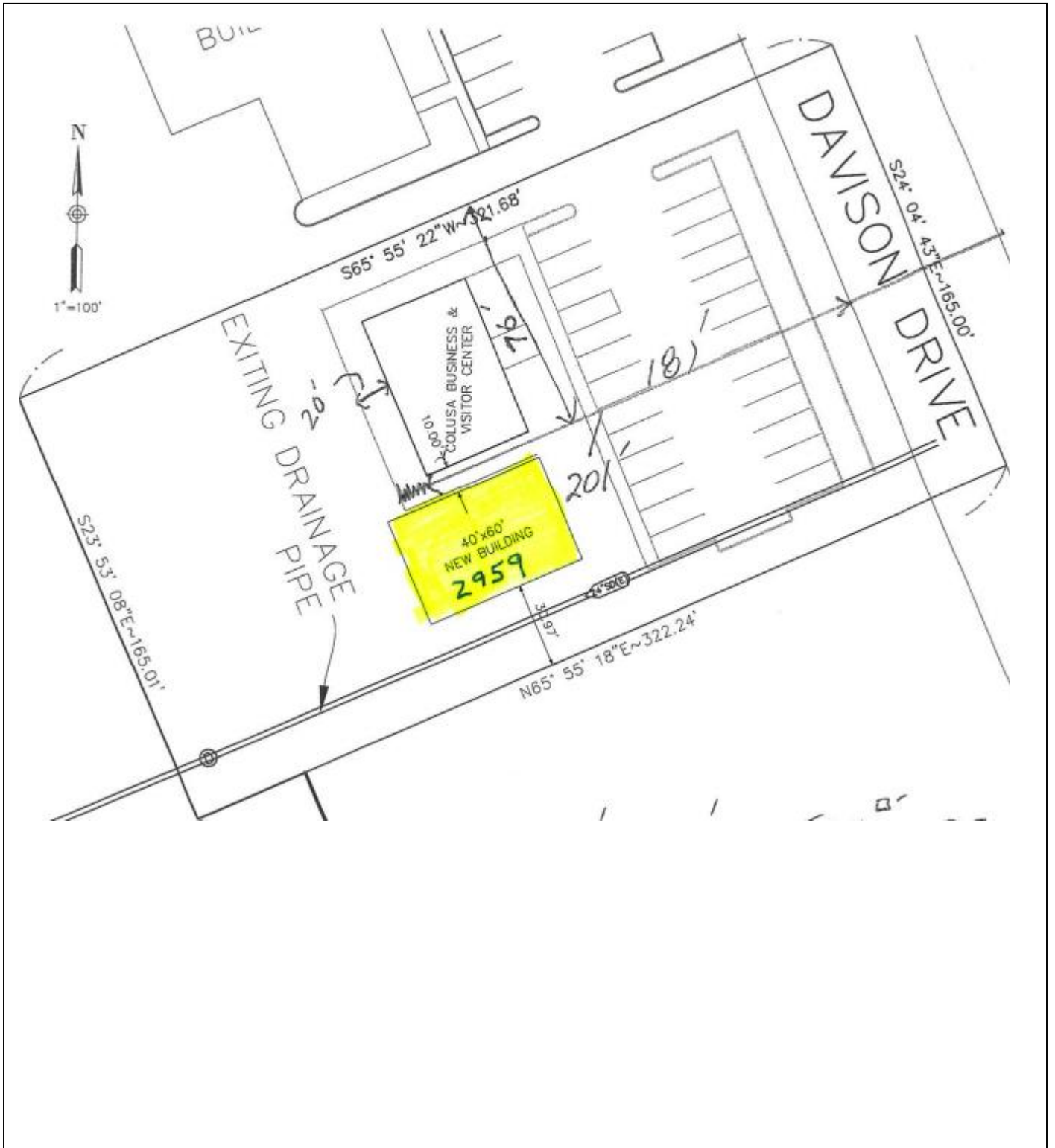
Item 1.

Legal Description

**2959 Davison court Colusa California 95932
0.87 Acres which is a portion of A.P.N 017-130-105**

Pending

Site & Boundary Map





City of Colusa California

STAFF REPORT

DATE: October 26, 2022
TO: Planning Commission
FROM: Jesse Cain, City Manager

AGENDA ITEM:

Subject: Amendments to Article 21 and 33

Recommendation: Staff recommends planning commissioners to review and fully understand proposed amendments and additions for approval at planning commission and city council level

BACKGROUND ANALYSIS:

In 2017 The City of Colusa Planning Commission and City Council approved 519 (12F, Article 21 in Zoning Code). At the time of this approval, Cannabis as a legal industry was new to California. In May of this year, the Planning Commission reviewed amendments to 519, thus creating 551, to allow legally approved dispensaries within city limits. As the City, State, and many other municipalities navigate this industry, unforeseen and regulatory updates to City Ordinances, policies, and procedures need to be made. Taking the learnings of the last several years, City staff proposes the attached changes be made to better satisfy the oversight of this industry and ensure enforcement and accountability.

BUDGET IMPACT: none

STAFF RECOMMENDATION: Approve the amendments and additions

ATTACHMENT:

Article 21.5
Chapter 12D
Resolution 2022-

EXHIBIT A

ARTICLE 21.5

Zoning Code

Article 21.5. - Cannabis Business Use Regulations.

Sec. 21.5.01. - Allowable zones; regulations generally.

1. (a) Cannabis business facilities are permitted, only upon the approval of a cannabis business special use permit issued by the city council, in the following zones:

Article 12. M-1 Light Industrial District

Article 13. M-2 General Industrial District Article 14. M-L Limited Manufacturing District

2. (b) Cannabis storefront dispensaries and microbusinesses are permitted, only upon the approval of a cannabis dispensary special use permit issued by the city council, in the following zones:

Article 10. C-G General Commercial District Article 12. M-1 Light Industrial District

3. (c) Upon application for a cannabis business special use permit, to be approved directly by the city council without need for a recommendation from the planning commission, the following regulations shall apply as to building type and construction, safety and security, required permits, and other relevant provisions necessary to protect the public health, safety and welfare. In any district where a cannabis business facility is permitted, the regulations of this article shall apply in addition to those hereinbefore specified for such district, provided that if a conflict in regulations occurs the regulations of this article shall govern.

Sec. 21.5.02. - Purpose and intent.

Cannabis business facilities shall be permitted, in accordance with the criteria and procedures set forth in this Code, upon application and approval of a cannabis business special use permit and a regulatory permit, pertaining to the location and operation of the facility. The regulations set forth in Chapter 12D and Chapter 12E shall not be applicable to any cannabis business facility subject to a valid cannabis business special use permit and a cannabis business regulatory permit, and the regulations set forth in this Article 21.5 and Chapter 12F of the Municipal Code shall control the location and operation of a cannabis business facility.

Sec. 21.5.03. - Cannabis business special use permit.

Prior to, or concurrently with, application for a regulatory permit, the applicant shall process and be issued a cannabis business special use permit as required by this article and Article 33, Section 33.03 of this Code. Information that may be duplicative in the two applications can be incorporated by reference. The cannabis business special use permit shall run with the regulatory permit and not the land.

Sec. 21.5.04. - Cannabis business facilities.

Cannabis business facilities permitted under this chapter include facilities where cannabis is manufactured into cannabis products, tested, distributed, and may also include the associated activities of planting, growing, harvesting, trimming and grading, and transporting, that holds a valid cannabis business special use permit pursuant to this article, and a regulatory permit as required by this Code, subject to the provisions of the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83), the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), and all statutes and regulations promulgated to implement the AMUA, and any other state laws pertaining to cultivating cannabis.

Sec. 21.5.05. - Definitions

"Applicant" means an owner that is applying for a City- and State-issued license.

"Business owner" means the owner(s) of the cannabis business operation. An owner of the commercial cannabis business includes all of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the commercial cannabis business, unless the interest is solely a security, lien, or encumbrance. For purposes of this section, "aggregate" means the total ownership interest held by a single person through any combination of individually held ownership interests in a commercial cannabis business and ownership interests in an entity that has an ownership interest in the same commercial cannabis business. For example, a person who owns 10 percent of the stock in a commercial cannabis business as an individual shareholder and 100 percent of the stock in an entity that owns 10 percent of the stock in the same commercial cannabis business has a 20 percent aggregate ownership interest in the commercial cannabis business.

(2) An individual who manages, directs, or controls the operations of the commercial cannabis business, including but not limited to:

1. (A) A member of the board of directors of a nonprofit.
2. (B) A general partner of a commercial cannabis business that is organized as a partnership.

(C) A non-member manager or managing member of a commercial cannabis business that is organized as a limited liability company.

(D) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust.

(E) The chief executive officer, president or their equivalent, or an officer, director, vice president, general manager or their equivalent.

"Cannabis" or "marijuana" means all parts of the *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 marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by

Chapter 14017 of the Statutes of 1972. "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. For the purpose of this Chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code. Cannabis and marijuana may be used interchangeably but shall have the same meaning.

"Cannabis activity" includes cultivation, manufacture, processing, laboratory testing, transporting, delivery, distribution, or sale of cannabis or a cannabis product, within the meaning of California Business and Professions Code 26000 et seq.

"Cannabis dispensary special use permit" means a use permit issued by the City of Colusa pursuant to this Section to a cannabis dispensary and is required before any cannabis dispensary activity may be conducted in the City.

"Cannabis business facility" or "cannabis operation(s)" means a cannabis business facility permitted under this chapter where cannabis activity occurs and cannabis is manufactured into cannabis products, tested, and distributed, and may also include the associated activities of planting, growing, harvesting, trimming, and grading, and transporting, as further defined in Sec. 21.5.04 above, but does not include storefront dispensaries, delivery only dispensaries, or cannabis microbusinesses.

"Cannabis business regulatory permit" or "regulatory permit" means the permit required under this article and Chapter 12F of this Code to operate a cannabis business facility, or to undertake any subcomponent of cannabis business which is done within the cannabis business facility ~~by a subcontractor or tenant of the holder of a cannabis business special use permit.~~

"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.

"City" means the City of Colusa.

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

"Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary, up to an amount determined to be authorized by the State of California, or any of its departments or divisions, to anyone for any purpose. "Delivery" also includes the use by a dispensary of any technology platform owned, controlled, and/or licensed by the dispensary, or independently licensed by the State of California under the MAUSCRA (as the same may be amended from time-to-time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed dispensary of cannabis or cannabis products.

"Delivery Only Cannabis Dispensary" means a Dispensary that does not have a storefront sales facility open to the public for retail sales.

"Dispensary" means a cannabis business facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that delivers, pursuant to express authorization, cannabis and cannabis products as part of a retail sale.

"Dispensing" means any activity involving the retail sale of cannabis or cannabis products from a dispensary.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. The term "manufacture" includes the following processes:

- (A) Extraction;
- (B) Infusion;
- (C) Packaging or repackaging of cannabis products;
- (D) Labeling or relabeling the packages of cannabis products;
- (E) Post-processing refinement of cannabis extract ("post-processing"); and
- (F) Remediation of failed harvest batches or cannabis product batches, other than relabeling to correct cannabinoid content

The term "manufacture" does not include the processes and activities listed in California Code of Regulations, Title 17; Division 1; Chapter 13. Manufactured Cannabis Safety; SUBCHAPTER 1. General Provisions and Definitions; Article 1. Definitions; §40100. Definitions, subpart (dd)

(2). "Manufacturing" or "manufacturing operation" means all aspects of the extraction process, infusion process, post processing, remediation, and packaging and labeling processes, including processing, preparing, holding, and storing of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients

"MAUCRSA" means the provisions of the Medicinal and Adult Use of Cannabis Regulation and Safety Act as set forth in Sections 5 and 7 of Article XI of the California Constitution and the Cal Bus & Prof Code Section 26000 et seq.

"Lab/Lab testing" means as defined in the state regulations issued by the Bureau of Cannabis Control.

"Microbusiness" means a location operating as a microbusiness as defined in the state regulations issued by the Bureau of Cannabis Control for cannabis microbusinesses.

"Non-commercial and recreational marijuana activity" means all uses not included within the definitions of cannabis business and cannabis dispensary, including the personal use, cultivation, or consumption of marijuana, whether medical or recreational.

"Nursery" means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

"Operator" means the business owner and any other person designated by the business owner as responsible for the day-to-day cannabis operations.

"Ordinance" means the ordinance adopting this article, and including the terms of this Article, which may be commonly referred to as the city's "Cannabis Business Ordinance".

"Police chief" means the police chief of the City of Colusa or his or her designee.

"Premises" or "site" means the designated structure(s) and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

"Premises owner" means the fee owner(s) of the premises where cannabis operations are occurring.

"Process," "Processing," and "Processes" mean all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or nonmanufactured cannabis products.

"Responsible party" shall mean the business owner, operator, manager(s), and any employee having significant control over the cannabis operations.

Sec. 21.5.06. - Minimum operational requirements and restrictions.

The following operational requirements and restrictions shall apply to all cannabis businesses and cannabis dispensaries, also referred to herein as cannabis operations:

1. (a) The Act and Other State Laws. The cannabis operations shall at all times be in compliance with the MAUCRSA and the implementing regulations, as they may be amended from time to time, as well as all required state license(s) under the MAUCRSA, and any other applicable state law.
2. (b) Marijuana and Cannabis Products Consumption. No marijuana or cannabis products shall be smoked, ingested or otherwise consumed on the premises. adequate signage of this prohibition shall be displayed throughout the facility.
3. (c) Alcoholic Beverages. No cannabis operation shall hold or maintain a retail license from the state department of alcohol beverage control to sell alcoholic beverages or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the premises.
4. (d) Transportation. Transportation shall only be conducted according to activity permitted by state law.
5. (e) Non-Cannabis Business Activity. No non-commercial or recreational marijuana activity shall occur on the premises.

6. (f) Retail Sales. "Storefront retail sales and non-storefront delivery only retail sales of any cannabis product are expressly prohibited without a valid City issued Cannabis Dispensary Regulatory Permit and Cannabis Dispensary Special Use Permit.
7. (g) Minors. It shall be unlawful for any operator to employ any person who is not at least eighteen (18) years of age, or any older age if set by the state.
8. (h) Distance Separation from Schools. Cannabis operations shall comply with the distance separation requirements from schools as required by state law. In addition, a cannabis business operation shall not be located within 1200 feet from any existing school or proposed school site as identified in the general plan. Measurements shall be from the property boundary to property boundary. For purposes of this article, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
9. (i) Building and Related Codes. The cannabis operation shall be subject to the following requirements:
 1. The premises in which the cannabis operations occur shall comply with all applicable local, state and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the building official of the city. The operator shall obtain all required building permits and comply with all applicable city standards.
 2. The responsible party shall ensure that the premises have sufficient electrical load for the cannabis operations.
 3. Butane and other flammable materials are permitted to be used for extraction and processing provided the operator complies with all applicable fire and building codes, and any other laws and regulations relating to the use of those products, to ensure the safety of that operation. The Colusa Fire Department shall inspect and approve the premises for use of the products prior to city's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement.
 4. The operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the cannabis operations.
 5. The operator shall comply with all environmental laws and regulations pertaining to the cannabis operations, including the use and disposal of water and pesticides, and shall otherwise use best practices in the handling and application of pesticides to avoid environmental harm.
10. (j) Odor Control. Cannabis operations shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the premises, outside the building housing the cannabis operations, or anywhere on adjacent property or public rights-of-way. As such, cannabis operations must install and maintain the following equipment or any other equipment which the city's building official determines has the same or better effectiveness:

1. An exhaust air filtration system with odor control that prevents internal odors and pollen from being emitted externally; or

2. An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.

3. A City issued Certificate of Occupancy approving installed odor absorbing ventilation, proper exhaust air filtration system, and any other odor control equipment, is required before Cannabis operations commence.

(B) Any Cannabis business that was existing, open and operating within the City as of December 1, 2017, may file an application with the City for a Certificate of Occupancy. The Certificate of Occupancy constitutes a revocable privilege, which shall be subject to revocation/suspension of any issued Cannabis Use Permits.

11. (k) Consumable Products. Cannabis operations that manufacture products in the form of food or other comestibles shall obtain and maintain the appropriate approvals from the state department of public health for the provision of food or other comestibles, unless otherwise governed by the Act and licensed by the state.

(l) Secure Building. All cannabis operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures, and include material strong enough to prevent entry except through an open door. The precise building construction and material to be used shall be identified and provided to the city prior to construction and provided with the application.

(m) Premises Security. The following security conditions shall apply:

1. Alarm system (both perimeter, fire and panic).

2. Remote monitoring of alarm systems.

3. Perimeter lighting systems (motion sensor) for after-hours security.

4. Perimeter security and lighting as approved by the police chief and community development director.

5. Use of drive gates with card key access or similar to access the facility.

6. Entrance areas to be locked at all times, and under control of a designated responsible party.

7. Use of access control systems to limit access to grow and processing areas.

8. Exterior and interior camera systems approved by the police chief. The camera systems shall meet the minimum requirements of the Act, include interior monitoring of all access points of the site from the interior, and be of a minimum 5 mega pixels in resolution.

9. All security systems at the site must be attached to an uninterruptible power supply that provides 24 hours of continuous power.

10. Security patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the police chief, in a time, place and manner to the satisfaction of the police chief. All current contact information regarding the security company shall be provided to the police chief.

11. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
12. Electronic track and trace systems for cannabis products as approved by the police chief.
13. Premises may be inspected, and records of the business owner audited by the city for compliance on a quarterly basis.
14. State of the art network security protocols and equipment need to be in place to protect computer information.
15. The foregoing requirements shall be approved by the police chief prior to commencing operations. The police chief may supplement these security requirements once operations begin, subject to review by the city council if requested by the business owner.

(n) The business owner, operator, and all responsible parties shall continually maintain the premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety, and general welfare of employees, patrons, surrounding properties, and the general public. The premises of the cannabis business shall not be maintained in a manner that causes a public or private nuisance.

(o) Cannabis business operations permitted by this article shall only be allowed in the specific areas designated on the diagram and floor plan of the premises submitted with the application for the regulatory permit under ~~Chapter 12D~~ or Chapter 12F. The cannabis business shall not operate at any place other than the address of the cannabis operation stated in the regulatory permit.

Sec. 21.5.07. - Deliveries of supplies and transportation of cannabis products to cannabis businesses and dispensaries.

The following rules apply to deliveries and transportation:

1. (a) Receiving of transported supplies to the premises of a cannabis business or dispensary shall only occur at the location shown on the diagram and floor plan on file with the city as part of the regulatory permit application. Delivery vehicles shall not have any markings indicating that deliveries are being made to a cannabis operation.
2. (b) The transportation of cannabis samples and product to and from a cannabis business or dispensary shall be in unmarked vehicles with no indication that the vehicles are transporting cannabis samples and products. The responsible party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the police chief.

Sec. 21.5.08. - Additional operational requirements and restrictions for cannabis businesses.

1. (a) Signage. There shall be no signage or markings on the premises, or off-site, which in any way evidence that cannabis operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.
2. (b) Public Access. There shall be no general unescorted public access to the premises of a cannabis business.
3. (c) Hours of Operation. Cannabis business shall be allowed to operate per the requirements of the underlying zone district and subject to the city's noise and nuisance ordinances.

Sec. 21.5.09. - Additional operational requirements and restrictions for cannabis dispensaries and microbusiness.

1. (a) Hours of Operation. Storefront cannabis dispensaries or cannabis microbusinesses may be open for access to the public only between the hours of 8:00 A.M. and 8:00 P.M. Monday through Sunday. Delivery only cannabis dispensaries may operate only during the hours specified in the business's cannabis dispensary use permit if any. If no specific hours of operation are stated in the delivery only use permit or regulatory permit, the delivery only dispensary shall be allowed to operate per the requirements of the underlying zone district and subject to the city's noise and nuisance ordinances.
2. (b) Signage shall be considered and approved with the cannabis business special use permit.
3. (c) ~~No person or entity shall operate a cannabis dispensary within the City of Colusa without first obtaining a cannabis dispensary regulatory permit from the city as set forth in Chapter 12D of the Municipal Code.~~ The regulatory permit shall be site specific and shall specifically identify the cannabis dispensary activities that will be allowed at that site. No cannabis dispensary activities will be allowed unless specifically identified in the regulatory permit.
4. (d) Cannabis dispensaries shall comply with all requirements and shall be subject to all of the regulations set forth in subsections 21.5.11 through 21.5.15 below.
5. The retail cannabis business shall prohibit on-site smoking, ingestion, or consumption of cannabis on the premises of the Retail Cannabis Business.

The term "premises" as used in this section includes the actual building of the Retail Cannabis Business, as well as any accessory structures, parking areas and the entire real property on which the Retail Cannabis Business is situated.

6. Physician services shall not be provided on the Premises.
"Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site with additional permitting.
7. The Premises and building in which the Retail Cannabis Business is located, as well as the operations conducted therein, shall fully comply with all applicable building codes, all applicable State and Federal environmental laws, the Americans with Disabilities Act, the Act, Program and Guidelines; and the MAUCRSA, as may be amended from time to time.
8. A Retail Cannabis Business shall ensure that the Limited-access Areas can be securely locked using commercial-grade, nonresidential door locks. A licensee shall also use commercial- grade, nonresidential door locks on all points of entry and exit to the licensed premises.
9. Retail Cannabis Business premises shall be alarmed with an alarm system that is operated and monitored by a properly licensed security company.
10. The Cannabis Business shall hire or contract for security personnel who are at least 21 years of age to provide on-site security services during hours of operation. Security personnel must be in uniform and readily identifiable. No security personnel shall be operating in an "undercover" capacity without prior notification to law enforcement. All

security personnel shall be in possession of a state-mandated guard card and relevant endorsements as well as acquire a City of Colusa Live Scan Identification.

11. All retail activity shall occur within a separate Cannabis dispensing area. No customers, Qualified Patients and/or Primary Caregivers shall be permitted to enter the dispensing area until proper identification is presented to the Retail Cannabis Business staff. The entrance to the Cannabis dispensing area and any storage areas shall be secured at all times, and under the control of Retail Cannabis Business staff.

Sec. 21.5.10. - Cannabis business regulatory permit.

No person or entity shall operate a cannabis business facility within the City of Colusa without first obtaining a cannabis business regulatory permit from the city as set forth in Chapter 12F of the Municipal Code. The regulatory permit shall be site specific and shall specifically identify the cannabis business activities that will be allowed at that site. No cannabis business activities will be allowed unless specifically identified in the regulatory permit. In addition, all persons or entities who undertake any subcomponent of the cannabis business operations or processes performed as a subcontractor or tenant of the holder of a cannabis business special use permit within the cannabis business facility shall first obtain a cannabis business regulatory permit from the city.

Sec. 21.5.11. - Fees and taxes.

All cannabis operations shall pay applicable fees and taxes, which may include one or more of the following:

1. (a) City Business License Fee. The business owner shall at all times maintain a current and valid business certificate and pay all business taxes pertaining to business licensing.
2. (b) Regulatory License Fee. The business owner shall pay an annual regulatory license fee ("regulatory fee") to cover the costs of anticipated enforcement relating to the cannabis operation. The amount of the fee shall be set by resolution of the city council and be supported by the estimated additional costs of enforcement and monitoring associated with the cannabis operation. The regulatory fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The regulatory fee may be amended from time to time based upon actual costs.

Sec. 21.5.12. - Record keeping.

1. (a) The responsible party shall make and maintain complete, accurate and legible records of the permitted cannabis operations evidencing compliance with the requirements of this article. Accounting and transaction records shall be maintained for a minimum of five years. Security surveillance system records shall be kept for a minimum of one year.
2. (b) On or before the 10th day of each month, the responsible party shall submit a production and sales report to the City Manager or designee disclosing all products

manufactured, acquired, sold, and/or distributed by the permitted cannabis operations listed by type of product for the prior month of operations.

Sec. 21.5.13. - Inspection.

Cannabis business operations shall be open for inspection by **City Administrator or their designee**, any city law enforcement officer or city code enforcement officer at any time the cannabis business is operating, at any other time upon responding to a call for service related to the property where the cannabis operation is occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any cannabis business shall be made immediately available to the police chief upon verbal request. No search warrant or subpoena shall be needed to view the recorded materials.

Sec. 21.5.14. - Insurance.

1. (a) The business owner shall at all times carry a comprehensive general liability policy in the minimum amount of one million dollars (\$1,000,000) combined single limit policy, as shall protect the business owner and city from claims for such damages, and which policy shall be issued by an "A" rated insurance carrier. Such policy or policies shall be written on an occurrence form. The city manager, in consultation with city's risk manager, may allow the business owner to obtain lesser amounts of insurance where multiple business owners are operating on the premises, provided at all times the minimum insurance set forth herein is applicable to the cannabis operations.
2. (b) The business owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the city setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the city and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the city of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.
3. (c) Coverage provided hereunder by the business owner shall be primary insurance and not be contributing with any insurance maintained by the city, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the city.

Sec. 21.5.15. - Violations; enforcement.

1. (a) Any person that violates any provision of this article shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.
2. (b) Any use or condition caused or permitted to exist in violation of any of the provisions of this article shall be and is hereby declared a public nuisance and may be summarily abated by the city pursuant to the City of Colusa Municipal Code.
3. (c) Any person who violates, causes, or permits another person to violate any provision of this article commits a misdemeanor.

4. (d) The violation of any provision of this article shall be, and is hereby declared to be, contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.
5. (e) In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this article may be subject to an administrative fine of up to one thousand dollars (\$1,000) for each violation and for each day the violation continues to persist.

Sec. 21.5.16. - Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this article or of the regulatory permit issued to implement this article, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article.

Chapter 12D

MEDICAL MARIJUANA DISPENSARIES.

Sec. 12D-1. Findings and purpose.

- A. — In enacting this chapter, it is the intent of the city council of the City of Colusa to protect the safety and welfare of the general public. The federal Controlled Substances Act, 21 USC 841, prohibits the possession, sale and distribution of marijuana, and the city council finds that sanctioning the opening or establishment of medical marijuana collectives, cooperatives and dispensaries would be inconsistent with federal law.
- B. — Furthermore, the city council finds that medical marijuana dispensaries are public nuisances in that many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered near outside marijuana collectives, cooperatives and dispensaries.
- C. — Allowing medical marijuana collectives, cooperatives and dispensaries would be inconsistent with the city's mission statement for the City of Colusa "to provide and maintain a progressive, family oriented, safe community" because medical marijuana dispensaries attract crime and detract from legitimate businesses. Therefore, in order to protect the integrity of the city and the goals upon which this city were founded, the city council finds that it is in the best interest of the residents of the city to prohibit marijuana collectives, cooperatives and dispensaries.
- D. — The purpose of this chapter is to prohibit medical marijuana collectives, cooperatives and dispensaries from being opened or established in the City of Colusa. Nothing in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

(Ord. No. 486, § 2, 3-5-2013)

Sec. 12D-2. Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases hereinafter shall have the meaning given them in this section.

- A. — "City" means the City of Colusa.
- B. — "Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code § 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code § 11362.7 et seq.).
- C. — "Medical marijuana dispensary" or "dispensary" means:
- (1) — Any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code § 11362.5 et seq.; or
 - (2) — Any facility, building, structure or location where three qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively, distribute, sell, dispense, transmit, process, deliver, exchange or give away

~~marijuana for medicinal purposes pursuant in California Health and Safety Code § 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General guidelines.~~

~~The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in California Health and Safety Code § 11362.5 et seq.~~

~~For purposes of this chapter, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law and complies strictly with applicable law, including, but not limited to, California Health and Safety Code § 11362.5 et seq.:~~

- ~~1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;~~
- ~~2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California 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 California Health and Safety Code;~~
- ~~4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;~~
- ~~5. A residential hospice; or~~
- ~~6. A home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.~~

~~D. "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability corporation, collective, cooperative, or combination thereof in whatever form or character.~~

~~(Ord. No. 486, § 2, 3-5-2013)~~

~~Sec. 12D-3. Medical marijuana dispensaries prohibited.~~

~~Medical marijuana dispensaries are prohibited in the city. It shall be unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a medical marijuana dispensary.~~

~~(Ord. No. 486, § 2, 3-5-2013)~~

~~Sec. 12D-4 Penalty.~~

~~A. Violation of this chapter is a public nuisance and shall be a misdemeanor.~~

~~B. Nothing in this chapter in any way limits any other remedy that may be available to the city, or any penalty that may be imposed by the city, for violations of this chapter. Such additional remedies, include, but are not limited to, injunctive relief, administrative citations, or a cause of action under the California Narcotics Nuisance Abatement Act (Health and Safety Code § 11570).~~

~~(Ord. No. 486, § 2, 3-5-2013)~~

CHAPTER 12E. MEDICAL MARIJUANA CULTIVATION.

~~Sec. 12E-1. Findings and purpose.~~

- ~~A. In enacting this chapter, it is the intent of the City Council of the City of Colusa to protect the safety and welfare of the general public. The Federal Controlled Substances Act, 21 U.S.C. Section 841, prohibits the possession, sale and distribution of marijuana, and the city council finds that sanctioning the cultivation of medical marijuana would be inconsistent with federal law.~~
- ~~B. Allowing medical marijuana cultivation would be inconsistent with the city's mission statement, for the City of Colusa "to provide and maintain a progressive, family-oriented, safe community." Therefore, in order to protect the integrity of the city and the goals upon which this city were founded, the city council finds that it is in the best interest of the residents of the city to prohibit the cultivation of marijuana.~~
- ~~C. Prior to the enactment of this chapter, there were no regulations addressing Cultivation of Medical Marijuana. Neither Proposition 215 nor Senate Bill 420, nor the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("guidelines") provide comprehensive civil regulation of premises used for marijuana cultivation.~~
- ~~D. The police department, city residents and other public entities have reported adverse impacts from medical marijuana cultivation, including disagreeable odors; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.~~
- ~~E. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.~~
- ~~F. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from unregulated marijuana cultivation, especially if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana can be cultivated in a concentrated place.~~
- ~~G. The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.~~
- ~~H. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including hospitals, schools, church parks or playgrounds, childcare centers, recreation centers or youth centers. Cultivation of any amount of marijuana at, or near these sensitive uses presents unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.~~

- I. ~~As recognized in the California Attorney General's "guidelines," the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.~~
- J. ~~The limited right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the city will achieve a significant reduction in the harms caused or threatened by the cultivation of marijuana.~~
- K. ~~The purpose of this chapter is to prohibit medical marijuana cultivation in the City of Colusa. Nothing in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.~~
- L. ~~Staff and residents of the city have observed that the smell associated with marijuana cultivation is severe enough that it interferes with the use and enjoyment of property in the city.~~
- M. ~~The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies, thefts and physical assaults from marijuana that is grown outdoors.~~
- N. ~~Medical marijuana growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana.~~

(Ord. No. 497, § 2, 5-6-2014)

Sec. 12E-2. Definitions.

~~For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases hereinafter shall have the meaning given them in this section.~~

- A. ~~"City" means the City of Colusa.~~
- B. ~~"Marijuana cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.~~
- C. ~~"Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health & Safety Code § 11362.5) and the Medical Marijuana Program Act (California Health & Safety Code § 11362.7 et seq.).~~
- D. ~~"Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability corporation, collective, cooperative, or combination thereof in whatever form or character.~~

(Ord. No. 497, § 2, 5-6-2014)

Sec. 12E-3. Medical marijuana cultivation prohibited.

~~Marijuana cultivation by any person, including primary caregivers, qualified patients, and dispensaries, is prohibited in the city.~~

(Ord. No. 497, § 2, 5-6-2014)

Sec. 12E-4. Penalty.

~~A. Violation of this chapter is a public nuisance.~~

~~B. Nothing in this chapter in any way limits any other remedy that may be available to the city, or any penalty that may be imposed by the city, for violations of this chapter. Such additional remedies, include, but are not limited to, injunctive relief, administrative citations, or a cause of action under the California Narcotics Nuisance Abatement Act (Health & Safety Code § 11570).~~

~~(Ord. No. 497, § 2, 5-6-2014)~~

Sec. 32.11. Medical marijuana dispensaries.

~~(a) Purpose and Intent. The section identifies that medical marijuana dispensaries are not permitted uses in any zone of the city, and therefore, such use will not be listed as an allowed use anywhere in the city.~~

~~(b) Medical Marijuana Dispensary as a Prohibited Use. A medical marijuana dispensary, as defined in section 4-100 is prohibited in all zones of the city. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary.~~

~~(Ord. No. 485, § 2, 3-5-2013)~~

Article 33. Use Permits.**Sec. 33.01. Major use permits.**

Major use permits, which may be revocable, conditional or valid for a term period, may be issued by the planning commission for any of the uses or purposes for which such permits are required or permitted by the terms of this ordinance. Guarantees to insure compliance with terms and conditions may be required by the commission.

(a) Major Use Permit Application and Fee.

1. Application for a major use permit shall be made to the city planning department in writing on a form prescribed by the city and shall be accompanied by plans and elevations necessary to show details of the proposed use or building. Such application shall be accompanied by a fee in an amount as established from time to time by resolution of the city council and of which no part shall be returnable to the applicant.
2. The planning commission shall hold a public hearing within sixty days after filing of an application for a major use permit. Notice of use shall be given by one publication in a newspaper of general circulation published in the City of Colusa and by mailing notice to the applicant and owners of all property within three hundred feet of any boundary of the lot or parcel for which the use permit has been filed, as such owners are shown on the last equalized assessment roll of the County of Colusa. Notice in each case to be given at least ten days prior to such hearing for categorically exempt applications under CEQA, and twenty-one days for applications under CEQA for negative declarations and/or environmental impact reports prior to such hearing.

(b) Action by the Planning Commission.

1. The findings of the planning commission shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or to be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.
 2. After making findings the planning commission shall either approve, with or without conditions, or deny said major use permit.
- (c) Revocation.
1. In any case where the conditions of the granting of a major use permit have not been, or are not, complied with, the planning commission shall give notice to the permittee of intention to revoke such permit at least ten days prior to a hearing thereon. Following such hearing the planning commission may revoke such permit.
 2. In any case where a major use permit has not been used within one year after the date of granting thereof, then without further action by the planning commission the use permit granted shall be null and void.
- (d) Appeal.
- Appeal from any finding or action of the planning commission may be made in, writing to the city council within ten days from the date of the commission's action. Such application shall be accompanied by a fee in an amount as established from time to time by resolution of the city council.
- (e) Whenever a major use permit is granted, the county assessor shall be so notified within thirty days of such action.

Sec. 33.02. Minor or administrative use permits.

Minor use permits, which may be revocable, conditional, or valid for a term period, may be issued by the planning director for any of the uses or purposes for which such permits are required or permitted by the terms of this ordinance. Guarantees to insure compliance with terms and conditions may be required by the director.

- (a) Minor Use Permit Application and Fee.
1. Application for a minor use permit shall be made to the city planning department in writing on a form prescribed by the city and shall be accompanied by plans and elevations necessary to show details of the proposed use or building. Such application shall be accompanied by a fee in an amount as established from time to time by resolution of the city council.
 2. The planning director shall hold an administrative hearing within sixty days after filing of an application for a minor use permit, notice of which shall be given by one publication in a newspaper of general circulation published in the City of Colusa and by mailing notice to the applicant and owners of all property within three hundred feet of any boundary of the lot or parcel for which the minor use permit has been filed, as such owners are shown on the last equalized assessment roll of the County of Colusa. Notice in each case to be given at least ten days prior to such hearing for categorically exempt applications under CEQA, and twenty-one days for application for negative declaration and/or environmental impact reports prior to such hearing.
- (b) Action by the Planning Director.

1. The findings of the planning director shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or to be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.
- (c) Revocation.
1. In any case where the conditions of the granting of a minor use permit have not been, or are not, complied with, the planning director shall give notice to the permittee of intention to revoke such permit at least ten days prior to a hearing thereon. Following such hearing the planning director may revoke such permit.
 2. In any case where a minor use permit has not been used within one year after the date of granting thereof, then without further action by the planning director said permit granted shall be null and void.
- (d) Appeal.
- Appeal from any finding of action of the planning director may be made in writing to the city planning commission within ten days from the date of the director's action. Such application shall be accompanied by a fee in an amount as established from time to time by resolution of the city council.
- Appeal from any finding or action of the planning commission may be made in writing to the city council within ten days from the date of the commission's action. Such application shall be accompanied by a fee in an amount as established from time to time by resolution of the city council.
- (e) Whenever a minor use permit is granted, the county assessor shall be so notified within thirty days of such action.

Sec. 33.03 Cannabis manufacturing special use permit application and fee.

Cannabis **cultivation, manufacturing, processing, lab/lab testing, distribution (retail dispensary/delivery)** special use permits, which may be revocable, conditional or valid for a term period, may be issued by the city council for any of the uses or purposes for which such permits are required or permitted by the terms of this ordinance. Guarantees to insure compliance with terms and conditions may be required by the city council.

- (a) Cannabis **Manufacturing** Special Use Permits Application and Fee.
1. Application for a cannabis **manufacturing**-special use permit shall be made to the city planning department in writing on a form prescribed by the city and shall be accompanied by plans and elevations necessary to show details of the proposed use or building. **A separate application is required for each type of Cannabis, including but not limited to: cultivation/nursery, manufacturing, processing, lab/lab testing, and distribution.** Such application(s) shall be accompanied by a fee in an amount as established from time to time by resolution of the city council and of which no part shall be returnable to the applicant. The application shall be presented directly to the city council for action.
 2. The city council shall hold a public hearing within sixty days after filing of an application for a cannabis manufacturing special use permit. Notice of use shall be given by one publication in a newspaper of general circulation published in the City of Colusa and by mailing notice to the applicant and owners of all property within three hundred feet of any boundary of the lot or parcel for which the cannabis manufacturing special use permit has been filed, as such owners are shown on the last equalized assessment roll of the County of Colusa. Notice in each case to be given at least ten days prior to such hearing for categorically exempt applications under CEQA,

and twenty-one days for applications under CEQA for negative declarations and/or environmental impact reports prior to such hearing.

- (b) Action by the City Council.
1. The findings of the city council shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or to be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.
 2. After making findings the city council shall either approve, with or without conditions, or deny said cannabis manufacturing special use permit.
- (c) Revocation.
1. In any case where the conditions of the granting of a cannabis ~~manufacturing~~ special use permit have not been, or are not, complied with, the city council shall give notice to the permittee of intention to revoke such permit at least ten days prior to a hearing thereon. Following such hearing the city council may revoke such permit.
 2. In any case where a cannabis ~~manufacturing~~-special use permit has not been used within one year after the date of granting thereof, then without further action by the city council the use permit granted shall be null and void.
- (d) Decision of the City Council Final. The decision of the city council shall be a final decision and appeal from said action shall be by writ of mandate in superior court.
- (e) Whenever a cannabis ~~manufacturing~~-special use permit is granted, the county assessor shall be so notified within thirty days of such action.
- (f) The cannabis ~~manufacturing~~-special use permit shall be issued to the business operator, be conditional upon issuance and holding of a valid cannabis manufacturing regulatory permit, and shall not run with the land.
- (g) No cannabis ~~manufacturing~~-special ~~use~~ permit shall be issued until either the city council approves a development agreement for the site, an operations agreement for the site approved directly by the city council, or until after the effective date of an approved ballot measure authorizing the taxation of commercial cannabis cultivation in the city.
- (h) The cannabis ~~manufacturing~~ special use permit shall run with the regulatory permit and not the land.

(Ord. No. 519, § 6, 7-18-2017)

RESOLUTION NO. 2022-

A RESOLUTION ADOPTED BY THE COLUSA PLANNING COMMISSION
RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF COLUSA ADOPT
CHANGES TO ORDINANCE 519-551 AND ARTICLES
32.11,12D,12F,21.5,21.5.01,21.5.06,21.05.07,21.5.09,21.5.13

WHEREAS, the City has received applications for development of cannabis manufacturing facilities,
and

WHEREAS, the City has no established City Municipal and Zoning Code regulations in place for
the orderly development of such uses, and

WHEREAS, all procedures of the California Environmental Quality Act (“CEQA”), California
Public Resources Code §21000 et seq., and the CEQA guidelines, title 14 of the California Code of
Regulations, chapter 3, §15000 et seq. have been satisfied as the activity is covered by the general rule that
CEQA applies only to projects which have the potential for causing a significant effect on the environment.
Where it can be seen with certainty that there is no possibility that the activity in question may have a
significant effect on the environment, the activity is not subject to CEQA.

WHEREAS, the Planning Commission has duly called, advertised and conducted a Public Hearing
required by law concerning proposed, said municipal code and zoning amendments; and

WHEREAS, the City of Colusa Planning Commission has considered public and staff input.

NOW, THEREFORE, BE IT RESOLVED by the City of Colusa Planning Commission, that the Planning
Commission recommends that the City Council of the City of Colusa adopt the emended changes to
ordinance 519-551 and Articles 32.11,12D,12F,12.5,12.5.01,21.06,21.05.07,21.5.09,21.5.13

THE FOREGOING RESOLUTION was duly introduced and passed at a regular meeting of the City of
Colusa Planning Commission held on the 26th day of October 2022, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

Signed and approved as to form by me on this ____ day of October 2022.

ATTEST: _____
Planning Commission Chair

City Manager