

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1633

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

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

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

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

WHEREAS, effective January 1, 2016, the Medical Cannabis Regulation and Safety Act (“MCRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medicinal cannabis businesses. The MCRSA created a dual-licensing system under which medicinal cannabis businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MCRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MCRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medicinal cannabis when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

WHEREAS, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Among other things, AUMA legalizes the recreational use of cannabis in California for individuals 21 years of age and older. The AUMA also authorizes the personal cultivation of up to six cannabis plants within a private residence or upon the “grounds” of that private residence for nonmedicinal purposes. The AUMA added Division 10 to the California Business and Professions Code, sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses.

The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(d) provides that a State licensing authority shall not approve an application for a State license for commercial non-medicinal cannabis activity if approval of the State license will violate the provisions of any local ordinance; and

WHEREAS, after Proposition 64 passed, the City Council, by a 4/5ths vote, on November 15, 2016, adopted urgency Ordinance No. 1610 imposing a temporary moratorium on the indoor cultivation of nonmedicinal cannabis for personal use (except under specified conditions). At the same time, the City Council, by a 4/5ths vote, adopted urgency Ordinance No. 1609 imposing a temporary moratorium on the outdoor cultivation of nonmedicinal cannabis. On December 20, 2016, the City Council adopted Ordinance Nos. 1613 and 1614 extending the two moratoria for 10 months and 15 days beyond the effective period of Ordinance Nos. 1609 and 1610, such that the moratoria will expire at midnight on November 14, 2017, if not extended; and

WHEREAS, at its meeting on October 24, 2017, the City Council adopted ordinances extending said Ordinance Nos. 1613 and 1614 through November 14, 2018; and

WHEREAS, neither said Ordinance expressly applied to commercial cannabis activities or to medicinal cannabis activities; and

WHEREAS, at its meeting on November 14, 2017, the City Council adopted an ordinance (Ordinance No. 1629) imposing a temporary moratorium on all commercial cannabis activities except for the delivery of medicinal cannabis from certain out-of-city businesses, CB Labs Novato, LLC, and Liposome Formulations, Inc.; and

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to cannabis businesses beginning January 1, 2018; and

WHEREAS, on September 16, 2017, the Governor signed AB 133 which makes further refinements to the MAUCRSA, including a provision that states that applicants for state commercial cannabis activities license(s) who voluntarily submit a valid, unexpired local license will be presumed to be in compliance with "all local ordinances," unless otherwise notified by the local jurisdiction. The state licensing authorities will be required to notify local jurisdictions when an applicant voluntarily submits a valid local license and local jurisdictions will be afforded the opportunity to rebut the validity of same; and

WHEREAS, MAUCRSA, as amended, imposes on local jurisdictions the obligation to determine whether commercial cannabis activities are permitted within their corporate boundaries and, if so, under what conditions. Furthermore, if such activities are not expressly addressed by regulations or ordinances, disputes will arise as to whether a given commercial cannabis activity or business has the right to operate within a given jurisdiction, potentially leading to the State's issuance of commercial licenses to operators who the local jurisdiction believes are precluded from operating within its boundaries and potentially even more problematic leading to the establishment of commercial cannabis businesses without the consent of the local jurisdiction and without any controls tailored to the local community's needs and land use and other policies; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, given Proposition 64's passage, it is more likely than not that the number of individuals who will desire to and will cultivate medicinal and nonmedicinal cannabis for personal use will be significant. It is further more likely than not that substantial numbers of persons may have already begun cultivating medicinal cannabis prior to the passage of Proposition 64 and those numbers have increased since its passage, and will continue to increase, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

WHEREAS, the cultivation of medicinal and nonmedicinal cannabis in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity. Additionally, incidents have arisen in other cities as the result of the operations of cannabis dispensaries and other commercial cannabis activities. Incidents involving complaints resulting in criminal investigations and the discovery of illegal cannabis cultivations have occurred in the City of Novato. It is reasonable to assume that AUMA's and MAUCRSA'S passage, without reasonable controls imposed by the City of Novato, will incentivize and lead individuals and companies to establish commercial cannabis businesses, clandestinely or otherwise, in the City, and based thereon assert that they are legal and are entitled to be issued state licenses. For example, CB Labs, Inc. ("CB Labs"), located at 1615 Hill Road, Novato, CA, secured a City business license without disclosing that its principal business was the testing of cannabis. In the event that the moratorium codified in this ordinance is not adopted, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons (i) establishing cannabis businesses in the City without City permission and being licensed by the State to do so and (ii) cultivating medicinal cannabis indoors and outdoors, creating the complaints and enforcement problems already being experienced in other communities and in the City of Novato and exposing citizens to malodorous smells, fires, robberies, potential violence, vandalism of property and theft of cannabis plants; and

WHEREAS, the City Council finds that allowing the use of property within the City for the cultivation of cannabis for medicinal purposes without the City having any authority to establish conditions, regulations, restrictions, and limitations upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by

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other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in neighborhoods, among others; and

WHEREAS, the City Council finds that allowing the use of property within the City for the establishment and operation of commercial cannabis businesses (such as retail stores or indoor or outdoor commercial cultivations) without the City having any authority to establish conditions, regulations, restrictions, and limitations upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in the City, among others; and

WHEREAS, based upon the experience of the State of Colorado and other states in which nonmedicinal cannabis has been legalized, it is likely that Proposition 64 will have significant impacts on the City's police department, the medical resources of the State and the regulatory function of local agencies, including the City of Novato; and

WHEREAS, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of cannabis have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The complexities and uncertainties surrounding the regulation of commercial and other cannabis-related activities have been exacerbated by the passage of the MAUCRSA which took effect on June 27, 2017, and the passage of AB 133 in September 2017 which made further changes to SB 94. The MAUCRSA repealed the MCRSA and consolidated the regulation of commercial medicinal and nonmedicinal cannabis activities. To add further uncertainty to the regulatory landscape, the regulations released during the first half of 2017 by the State agencies charged with enforcing the laws governing commercial cannabis activities have been withdrawn. And the State agencies have since the adoption of Ordinance No. 1629 issued recently issued emergency regulations. The City needs time to further study the new State regulations, AUMA and MAUCRSA and whether and to what extent the City's General Plan, Zoning Code and other regulations will need to be or should be modified to accommodate and/or address the impacts of the AUMA and MAUCRSA on the City and its citizens. Were the City Council to permit the unregulated, cultivation of medicinal cannabis and/or the establishment and operation of all commercial cannabis activities while it studied the means and methods to address such activities, those persons who were engaged in such activities may garner rights to continue such activities as grandfathered or State-licensed uses, unaffected by later-enacted legislation or taxes by the City Council. Such an outcome presents an immediate and current threat to the ability of the City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence such activities before such plans and/or regulations are put into place; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the cultivation of medicinal cannabis and commercial cannabis activities implicated by the AUMA and MAUCRSA and the effects of such activities should the City determine to regulate such uses within the City's corporate boundaries, and in order to protect

residents and businesses from the potential harmful effects of the establishment and operation of such businesses and activities, the City needs time to study whether to permanently regulate such uses and, if so, the City needs time to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations; and

WHEREAS, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency Ordinance, it is likely that the establishment and operation of medicinal cannabis cultivations and commercial cannabis activities within the City, without appropriate controls in place to regulate same and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, notwithstanding the facts establishing the justification for the adoption of this Ordinance stated above, CB Labs Novato, LLC, has been operating in the City for several years and has been providing an important service to medicinal cannabis users, namely, testing such cannabis for safety, potency and contaminants. Additionally, Liposome Formulations, Inc. ("Formations") located at 42 Digital Dr., Suite 6, Novato, CA, has been conducting business in the City for many years and does not manufacture, cultivate, distribute, deliver, or sell cannabis, but rather, extracts cannabinoids from industrial hemp for use in various pharmaceutical products it produces and sells to physicians and other medical care providers throughout the nation. Finally, there are hundreds if not thousands of Novato residents who are provided and depend upon medicinal cannabis to address various medical issues from which they are suffering. Given these activities' minimal and/or existing impacts on the community and physical environment, and given the benefits that they provide to City residents in need of and/or using medicinal cannabis, the Council has determined that this Ordinance should not be made applicable to these activities, subject to certain conditions; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence medicinal cultivation operations and commercial cannabis activities, that such pose a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the said activities will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City.

WHEREAS, absent the adoption of this interim urgency Ordinance extending Ordinance No. 1629, it is likely that the establishment and operation of medicinal cannabis cultivations and commercial cannabis activities within the City, without appropriate controls in place to regulate same and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence medicinal cultivation operations and commercial cannabis activities, that such pose a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the said activities will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

WHEREAS, Ordinance No. 1629 shall expire at midnight on December 29, 2017, unless extended by subsequent ordinance adopted pursuant to Cal. Gov't Code section 65858; and

WHEREAS, at its meeting on December 5, 2017, the City Council was presented the report described in said section 65858(d) ("Report") specifying the measures taken to alleviate the conditions which led to the adoption of Ordinance No. 1629. In said Report it is stated that the said conditions giving rise to the necessity of adopting Ordinance No. 1629 have not been alleviated and that more time is necessary in order to study and address the issues involved in deciding whether to continue prohibiting the cultivation of medicinal cannabis and commercial cannabis activities or regulate such, and, if so, how to regulate those activities. Said Report is hereby approved and the City Manager or his designee is authorized to issue same at the appropriate date; and

WHEREAS, based on the findings set forth above, it is the intent of the City Council to extend Ordinance No. 1629's moratorium on the indoor and outdoor cultivation of medicinal cannabis and commercial cannabis activities throughout the City (and except as provided therein) to a date that is ten months and 15 days following the last day that Ordinance No. 1629 is in effect. In other words, until midnight on November 13, 2018:

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

**Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Novato, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

**Section 2. Urgency Moratorium Imposed - Prohibited Uses and Activities.**

A. Commercial cannabis activity, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any provision of the City of Novato Municipal Code, this prohibition will control.

B. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. The indoor and outdoor commercial and non-commercial cultivation of cannabis for medicinal and non-medicinal purposes, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in medicinal cannabis cultivation anywhere within the city. To the extent that this prohibition conflicts with any provision of the City of Novato Municipal Code, this prohibition will control.

D. A property owner shall not rent, lease or otherwise permit any person or business that engages in medicinal cannabis cultivation activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in medicinal cannabis cultivation activity on any real property owned or controlled by that property owner that is located in the city.

E. Among other things, subsections A and C above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

F. To the extent not already prohibited by subsection A above, all commercial and non-commercial deliveries of cannabis or cannabis products for medicinal or non-medicinal purposes, to or from any location are expressly prohibited. No person shall conduct or perform any commercial and non-commercial delivery of any cannabis or cannabis products for a medicinal or non-medicinal purpose, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

### **Section 3. Exceptions.**

A. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, nothing in this Ordinance shall prohibit a person 21-years of age or older from:

1. Possessing, processing, transporting, using, ingesting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, transporting, ingesting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Smoking or ingesting cannabis or cannabis products except as prohibited by California Health and Safety Code section 11362.3, and/or applicable provisions of the City of Novato Municipal Code;

4. Possessing, transporting, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever;

5. Engaging in the cultivation of six or fewer live cannabis plants for medicinal purposes within a single private residence and/or a fully enclosed and secure structure pursuant to and in accordance with section 4, below. Said cultivation may be undertaken only by a qualified patient or a primary caregiver. In no case shall the total number of live cannabis plants being cultivated for medicinal and/or nonmedicinal purposes within a single private residence and/or upon the grounds of that single private residence exceed six at any given time. In no instance may personal cultivation occur on vacant property.

B. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, a primary caregiver may possess, store, transport, donate or provide medicinal cannabis in quantities permitted by State law on behalf of or to qualified patients residing in the city for whom he or she is the primary caregiver.

C. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, a person 18 years of age or older but less than 21 years of age who is a qualified patient or primary caregiver may cultivate indoors up to six live cannabis plants for medicinal purposes within a single private residence and/or a fully enclosed and secure structure pursuant to and in accordance with section 4. In no case shall the total number of live cannabis plants being cultivated for medicinal or nonmedicinal purposes within a single private residence and/or upon the grounds of that single private residence exceed six at any given time. In no instance may personal cultivation occur on vacant property.

D. Notwithstanding section 2, above, the delivery of medicinal cannabis from a business existing as of November 14, 2017, the date that Ordinance No. 1629 was adopted, and no more than 10 businesses that began operating after November 14, 2017, all of which are located outside the city and licensed to make such deliveries under the MAUCRSA, or any other provision of law that permits State licenses for medicinal cannabis delivery businesses, shall be permitted into the city.

E. This ordinance shall also not prohibit CB Labs Novato, LLC, from establishing and operating a testing laboratory at 1615 Hill Road, Suites 8, 9 and 10, Novato, CA, occupying approximately 2,000 square feet, (i) provided that: (1) CB Labs Novato, LLC, enters into an agreement with the city which permits said use at said location and includes provisions for security, audits, the payment of fees, appropriate payments to the city, compliance with the MAUCRSA and any other applicable local and state laws and regulations and other conditions and requirements which the city finds necessary and acceptable, (2) CB Labs Novato, LLC obtains all final, land use approvals and other entitlements necessary to permit such use, to the extent any are required, (3) all conditions precedent to the establishment and operation of said testing laboratory – as stated in the agreement and final decision – have been fully satisfied; and (4) CB Labs Novato, LLC, fully complies with said agreement, approvals and the MAUCRSA and applicable local and state laws and regulations; and (ii) provided further, that section 2 shall apply to CB Labs Novato, LLC, unless and until it is approved by final decision and/or agreement of the city and (a) said decision and/or agreement expressly exempts CB Labs Novato, LLC, from this ordinance or (b) the conditions precedent to exemption from this ordinance as set forth in the said decision and/or agreement have been fully satisfied.

F. This ordinance shall also not prohibit the operation of Liposome Formulations, Inc. (“Formulations”) located at 42 Digital Dr., Suite 6, Novato, CA, from continuing to conduct

business at that same location in the City, provided that Formulations conducts only that business that it has been conducting at this location prior to the adoption of this ordinance and continues at all times to remain in full compliance with all applicable federal, state, and local law and regulations for as long as it shall operate within the City.

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

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

#### **Section 4. Indoor Cultivation Standards.**

A. Indoor Cultivation in Private Residence. The indoor cultivation of cannabis on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Cannabis cultivation is prohibited as a home occupation.

2. All areas used for cultivation of cannabis shall comply with Chapter IV (Building and Housing) of the Novato Municipal Code, as well as applicable law.

3. Indoor grow lights shall not exceed 1,000 watts per luminaire, and shall comply with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter IV of the Novato Municipal Code.

4. The use of gas products (CO<sub>2</sub>, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited.

5. Any fully enclosed and secure structure or residence used for the cultivation of cannabis must have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter IV of the Novato Municipal Code.

6. A fully enclosed and secure structure used for the cultivation of cannabis shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.

7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.

8. Cannabis cultivation shall be limited to six cannabis plants per private residence, regardless of whether the cannabis is cultivated inside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence.

9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. These rooms shall not be used for cannabis cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.

10. Indoor cultivation of cannabis shall only take place on impervious surfaces.

11. From a public right-of-way, there shall be no exterior evidence of cannabis cultivation occurring on the parcel.

12. Cannabis cultivation areas, whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age (unless the person is a qualified patient or primary caregiver, in which case access is permissible by these persons).

13. Written consent of the property owner to cultivate cannabis within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the building official or his/her designee.

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of cannabis. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

15. The following regulations apply to the disposal of cannabis waste on residential property:

- (a) Cannabis and cannabis infused products must be disposed in a secure waste receptacle located on the residential property.
- (b) Cannabis plants and products must be rendered unusable and unrecognizable by grinding and incorporating cannabis waste with any non-consumable solid waste with a resulting mixture of at least 50 percent non-cannabis waste.

**Section 5. Cannabis Delivery Standards**

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

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

## **Section 6. Definitions.**

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

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

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

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

“Industrial hemp” means a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa L.* having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

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

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated

cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

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

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

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

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

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

I. "Fully enclosed and secure structure" means a space within a building that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter 14.10 (Construction Codes) of the Novato Municipal Code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, canvas, vinyl, or similar products or materials, regardless of gauge, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

J. "Indoors" means inside a fully enclosed and secure structure or within a private residence.

K. "Luminaire" means a complete lighting unit consisting of lamp(s) and the parts that distribute the light, position and protect the lamp(s), and connect the lamp(s) to the power supply.

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

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

N. "Medicinal cannabis" means cannabis used for medical purposes as described in Cal. Health & Safety Code section 11362.5.

O. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or within a private residence.

P. "Primary caregiver" means the individual described in Health & Safety Code section 11362.7(d).

Q. "Private residence" means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

R. "Qualified patient" means an individual who is entitled to the protections of Health & Safety Code section 11362.5.

S. "Solid fence" means a fence constructed of substantial material, such as wood or metal, that prevents viewing the contents from one side to the other side of the fence.

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

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

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

**Section 7. Except as Provided in this Ordinance, Establishment, Maintenance or Operation of Medicinal Cannabis Cultivation and/or Commercial Cannabis Activities Declared Public Nuisance.**

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

**Section 8. Environmental Findings**

This ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the environmental regulations of the city. Community Development Department ("CDD") staff has determined that the adoption and implementation of the ordinance and its allowance of the indoor cultivation of medicinal cannabis is eligible for Class 4 and 5 categorical exemption for minor changes in land use limitations and/or minor alterations in the condition of land and/or vegetation

and will not have a significant environmental impact. Since Proposition 64 already authorizes the indoor cultivation of up to 6 cannabis plants and this ordinance does not increase that amount, this ordinance will have no impact on existing conditions as regards the indoor cultivation of cannabis. Furthermore, cultivation is proscribed except indoors: in existing residential structures or fully enclosed and secure structures, the latter of which can be built in backyards but because only up to 6 plants can be cultivated therein, it is not anticipated such structures will be large or require significant changes to the landscape or other improvements. In short, the ordinance is exempt from the environmental review requirements of CEQA pursuant to Sections 15304 and 15305 of Title 14 of the California Code of Regulations. CDD staff has also determined that the ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption and implementation of the ordinance to prohibit all commercial cannabis activity except for the delivery of medicinal cannabis to qualified patients and/or their primary care givers and one already-existing testing laboratory will have a significant effect on the environment because banning activities will not have an impact on the physical environment because there is reliable evidence that there already exist cannabis delivery businesses operating within the city and that primary caregivers are providing medicinal cannabis to qualified patients within the city. Moreover, there is no evidence that the activities of CB Labs have created adverse impacts on traffic, parking or any other physical aspect of the environment. Prohibiting all commercial cannabis activities save for the limited activities exempted from the ordinance's provisions is also exempt under (a) CEQA Guidelines Section 15308 because it is a regulatory action taken by the City in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment and (b) CEQA Guidelines, Section 15060(a)(2) because the prohibition will not result in a direct or reasonably foreseeable indirect physical change in the environment. CDD staff has also determined that this ordinance is exempt under CEQA as a Class 1 exemption (CEQA Guidelines sec. 15301) as a minor alteration of existing residential structures, for this ordinance permits indoors cultivation of up to 6 cannabis plants under certain conditions, which said conditions may result in fencing and other minor improvements to be built on or in private residences. But the erection of such improvements is already permitted under existing laws and city regulations or involves alterations and improvements such as interior electrical conveyances or similar interior or exterior facilities and features that entail negligible or no expansion of an existing use. Additionally, permitting up to 6 cannabis plants to be grown on a private residence is not significantly different from the indoor plant growing and maintenance that occupants of private residences are already permitted to perform on residential properties and, as such, does not constitute an expansion of use within the contemplation of the Class 1 CEQA exemption and is otherwise exempt under CEQA Guidelines section 15304. The City Council has reviewed CDD's Staff's determination of exemption, and based on its own independent judgment, concurs with Staff's determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Marin in accordance with CEQA Guidelines.

## **Section 9. Severability.**

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

subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**Section 10. Effective Date and Duration.**

This ordinance shall become effective immediately if adopted by at least four-fifths vote of the City Council, and shall remain in effect until the date that is ten months and fifteen days following the last day that Ordinance No. 1629 is in effect, namely, until midnight on November 13, 2018. Ordinance No. 1629's prohibition of uses and other terms and provisions set forth in sections 2 through 7 thereof shall be extended to the date that is ten months and fifteen days following the last day that Ordinance No. 1629 is in effect, namely, until midnight on November 13, 2018.

**Section 11. Posting.** The City Clerk shall cause this ordinance (or a summary thereof) to be published and/or posted within fifteen days after its adoption

\* \* \* \* \*

This ordinance was adopted on the 5th day of December, 2017, by the following vote:

AYES: Councilmembers Drew, Eklund, Fryday, Lucan, Athas  
NOES: Councilmembers None  
ABSTAIN: Councilmembers None  
ABSENT: Councilmembers None

Denise Athas  
Mayor of the City of Novato

Attest:  
Terrie Miller  
City Clerk of the City of Novato

Approved as to form:  
Jeff Walk  
City Attorney of the City of Novato