



TOWN OF PORTOLA VALLEY

7:00 PM – Regular Meeting of the Planning Commission
Wednesday, February 21, 2018
Historic Schoolhouse
765 Portola Road, Portola Valley, CA 94028

REGULAR MEETING AGENDA

7:00 PM - CALL TO ORDER AND ROLL CALL

Commissioners Gilbert, Hasko, Taylor, Vice-Chair Goulden, Chair Targ

ORAL COMMUNICATIONS

Persons wishing to address the Planning Commission on any subject may do so now. Please note however, that the Planning Commission is not able to undertake extended discussion or action tonight on items not on the agenda.

OLD BUSINESS

1. Recommendation to Town Council on Proposed Ordinance adding Chapter 18.39 [Cannabis Land Uses] and amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code (continued from February 7, 2018 meeting) (Staff: C. Silver and J. Dennis)

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

2. News Digest: Planning Issues of the Day

APPROVAL OF MINUTES

3. Planning Commission Meeting of February 7, 2018

ADJOURNMENT

ASSISTANCE FOR PEOPLE WITH DISABILITIES

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (650) 851-1700. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

AVAILABILITY OF INFORMATION

Any writing or documents provided to a majority of the Town Council or Commissions regarding any item on this agenda will be made available for public inspection at Town Hall located 765 Portola Road, Portola Valley, CA during normal business hours.

Copies of all agenda reports and supporting data are available for viewing and inspection at Town Hall and at the Portola Valley Library located adjacent to Town Hall.

PUBLIC HEARINGS

Public Hearings provide the general public and interested parties an opportunity to provide testimony on these items. If you challenge any proposed action(s) in court, you may be limited to raising only issues you or someone else raised at the Public Hearing(s) described in this agenda, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing(s).



TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Planning Commission

FROM: Cannabis Subcommittee
Cara E. Silver, Town Attorney

DATE: February 21, 2018

RE: Recommendation to Town Council on Proposed Ordinance adding Chapter 18.39 [Cannabis Land Uses] and amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code

RECOMMENDATION

Staff recommends that the Planning Commission review and recommend that the Town Council:

1. Find the Proposed Cannabis ordinance is exempt from the California Environmental Quality Act and
2. Adopt the attached proposed ordinance adding Chapter 18.39 [Cannabis Land Uses] and amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code (Attachment A).

EXECUTIVE SUMMARY

The proposed ordinance divides cannabis activities into three major categories: (1) permitted personal use; (2) permitted small scale cannabis cultivation and (3) prohibited other commercial cannabis activity.

Consistent with State law, the proposed ordinance permits personal cultivation, both inside and outside, up to the legally permitted six plants, and places certain restrictions on personal cultivation. In addition, the ordinance permits the transportation of cannabis on public roads and the lawful delivery of cannabis to a customer within the Town, provided a State permit is obtained by the delivery services. Finally, subject to restrictions the ordinance permits commercial cultivation of up to twelve plants provided both a State permit and a local Commercial Cannabis permit is obtained. The ordinance

bans all other commercial cannabis activity, including dispensaries.

For small scale commercial cannabis cultivation, the proposed ordinance provides a discretionary permitting scheme, standard operating conditions (including an additional conditional of approval concerning public safety/security), an appeal process, development criteria and operating requirements, revocation process and enforcement provisions.

BACKGROUND

On November 8, 2016, the State voters adopted Proposition 64 or the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA contained a phased approach to legalizing cannabis activities. Effective November 9, 2016, the AUMA legalized personal cannabis activity. Effective January 1, 2018, the AUMA legalized commercial cannabis activity, subject to receipt of a State cannabis permit and subject to any local cannabis regulations. On October 25, 2017, the Town Council conducted a public hearing on AUMA and considered staff’s recommendation to adopt a 45-day interim urgency ordinance prohibiting all commercial cannabis land uses and all personal outdoor cultivation, but permitting personal medical marijuana use, medical marijuana delivery and personal indoor cultivation. At that hearing, Council voted 5-0 to reject the moratorium and instead directed the Planning Commission to review the City’s existing regulations and determine the need for a local cannabis ordinance.

On December 6, 2017, the Planning Commission conducted a study session on cannabis updates. To help expedite the evaluation of the municipal code and its application to possible scenarios for commercial cannabis activities, staff recommended the formation of an ad-hoc subcommittee comprised of two Planning Commissioners supported by staff including the Planning Director, Public Works Director, Fire Marshal, and Town Attorney. Commissioners Targ and Goulden were appointed to the subcommittee. The goal of the subcommittee was to examine the entire range of potential applications and fully vet what may ultimately come before the Planning Commission and Town Council. Beginning in November, 2017, the subcommittee met to develop an ordinance.

On February 7, 2018, the full Planning Commission reviewed the proposed ordinance recommended by the subcommittee. The Planning Commission was in general agreement on the overall structure and use restrictions contained in the ordinance. In addition, the Planning Commission provided additional comments and feedback and requested staff to return with a modified ordinance.

DISCUSSION

This section discusses the Planning Commission’s comments on the ordinance and the corresponding ordinance changes.

Planning Commission Comments	Ordinance Changes
Outdoor commercial cannabis (up to 12 plants) may be allowed in all zones subject to meeting Code's operational and locational requirements, zoning requirements and receipt of State and local Cannabis permits	Section 18.39.030 amended to clarify that commercial cannabis can be grown in any residentially zoned property.
Cannabis should not be grown in ordinary public view from rights of way (i.e. street), parks, City owned/maintained trails.	Section 18.39.040 B(1) modified.
Cannabis should not be grown within 600 feet of sensitive receptors, including schools, day care centers, youth centers (Triangle Park specifically called out as sensitive receptor) and Safe Routes to School trails. Include specific list of sensitive receptor locations.	Section 18.39.040 B(2) modified. Also definition of "Sensitive Receptor" added for clarity.
Up to five permits may be issued first year and up to five additional permits may be issued each year thereafter, but in no event shall total number of permits exceed 10.	Section 18.39.060 (M) modified.
Permit holder must own premises where cannabis is grown and must be a Portola Valley resident.	Section 18.39.140 B modified. Also, definition of "owner" deleted as it is no longer necessary.
Clarification that residents can grow up to 6 plants for personal use and up to 12 plants for commercial use (with local Cannabis permit) (Ordinance, p. 5.)	Section 18.39.030 modified.
Clarification that proposed cannabis activity is no more objectionable than the types of conditional uses permitted in the underlying zoning district. (Ordinance, p. 7.)	Section 18.39.070 B(2) modified.
No sunset provision, but have annual reviews for first five years.	Section 3 added to ordinance.
Business hours of operation may be restricted in permit conditions	This can be added as permit condition on case by case basis.

Do any of the ordinance provisions apply to personal use? If so, review definition and use of term “permittee.”	No, the only provisions dealing with personal use are in Section 18.39.030, 18.39.040 and 18.39.140 (I)
Ensure ordinance language clarifies that local residency still required where property is owned by corporate or LLC entity	Section 18.39.140 modified.
Include Colorado’s House Bill 17-1220 in administrative record	See Attachment B.

Sensitive Receptor Buffers

Staff believes the same list of sensitive receptors should be used to “buffer” both personal outdoor cultivation as well as commercial cultivation. The current ordinance contains a list of sensitive receptors and, as directed by the Planning Commission, indicates a list of such receptors will be maintained by staff and made publicly available.

As for measuring the distance, the ordinance proposes different ways of measuring for personal and commercial use. For commercial cultivation, State law specifies that the 600 foot buffer be measured from the closest property line of the sensitive receptor to the closest property line of the parcel with the cannabis cultivation. Staff recommends the ordinance follow State law here. (See Section 18.39.140 D.) As for personal use, State law does not impose a buffer requirement although towns are free to impose one. Staff recommends measuring the distance between the actual cultivation site and the closest property line of the sensitive receptor. This responds to the comment voiced by one commissioner that larger parcels that can provide a 600 foot buffer should not be penalized.

A list of sensitive receptors and a map of the Safe Routes to School are included as Attachments C and D.

NEXT STEPS

The Planning Commission’s recommendation on the ordinance will be forwarded to the City Council for further public hearing and consideration.

ENVIRONMENTAL REVIEW

Given the modest changes to the City’s existing zoning regulations, this project is exempt from the California Environmental Quality Act pursuant to Section 15378 of the CEQA Guidelines.

Attachments:

- A. Proposed Cannabis Ordinance
- B. Colorado House Bill 17-1220
- C. List of Sensitive Receptors
- D. Safe Routes to School Map

cc: Jeremy Dennis, Town Manager
Arly Cassidy, Interim Planning Director

Reviewed by: Jeremy Dennis, Town Manager

A handwritten signature in black ink, appearing to read "Arly", is positioned to the right of the "Reviewed by" text.

ORDINANCE NO. _____

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA VALLEY ADDING CHAPTER 18.39 [CANNABIS LAND USES] TO TITLE 18 [ZONING] AND AMENDING SECTION 8.12.010 [DEFINITION OF NUISANCE] OF CHAPTER 8.12 [NUISANCE ABATEMENT] OF TITLE 8 [HEALTH & SAFETY] OF THE PORTOLA VALLEY MUNICIPAL CODE

WHEREAS, Proposition 64 or the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) took effect on November 9, 2016 and made it legal for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; possess, process, transport, purchase, obtain or give away to persons of 21 years of age or older 28.5 grams of marijuana or eight grams of concentrated marijuana; and possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use; and

WHEREAS, the AUMA allows local governments to impose reasonable regulations on indoor cultivation and to regulate or ban outdoor cultivation or other cannabis land uses; and

WHEREAS, Senate Bill 94 took effect on June 27, 2017 and blended together the non-medical marijuana regulations in the AUMA and the Medical Cannabis Regulation and Safety Act (“MCRSA”) to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, after a study session on December 6, 2018, the Planning Commission of the Town of Portola Valley (“Town”) formed a subcommittee consisting of Commissioner Targ and Commissioner Gould to help Town staff prepare an ordinance relative to the reasonable regulation and/or ban of cannabis land uses;

WHEREAS, on February 7, 2018, the Planning Commission held a public hearing to review the draft ordinance regarding cannabis land uses at which all interested persons had the opportunity to appear and after considering the entire record of proceedings, including but not limited to, the staff report and all written and oral comments received, the Planning Commission voted to recommend that the Town Council approve the ordinance; and

WHEREAS, on _____, 2018, the Town Council of held a public hearing to review the proposed ordinance regarding cannabis land uses at which all interested persons had the opportunity to appear and after considering the entire record of proceedings, including but not limited to, the staff report and all written and oral comments received and the Planning Commission recommendation, the Town Council voted to approve the ordinance.

NOW, THEREFORE, the Town Council of the Town of Portola Valley does **ORDAIN** as follows:

1. ADDITION OF CODE. Chapter 18.39 [Cannabis Land Uses] is hereby added to Title 18 [Zoning] of the Portola Valley Municipal Code to read as follows:

Chapter 18.39 Cannabis Land Uses

18.39.010	Purpose
18.39.020	Definitions
18.39.030	Prohibited and Permitted Cannabis Activities
18.39.040	Specific Non-Commercial Cannabis Activities Allowed
18.39.050	Town Commercial Cannabis Activity Permit Required
18.39.060	Commercial Cannabis Activity Application Requirements
18.39.070	Review of Commercial Cannabis Activity Permits
18.39.080	Grounds for Denial of an Application
18.39.090	Appeal to Town Council
18.39.100	Permit Renewal
18.39.110	Permit Nontransferable
18.39.120	Fees
18.39.130	Taxes
18.39.140	Commercial Cannabis Development Criteria and Operating Requirements
18.39.150	Record Retention
18.39.160	Track and Trace Program
18.39.170	Revocation or Suspension of Permit
18.39.180	Enforcement and Penalties

18.39.010 Purpose

Proposition 64 or the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) took effect on November 9, 2016 and made it legal for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; possess, process, transport, purchase, obtain or give away to persons of 21 years of age or older 28.5 grams of marijuana or eight grams of concentrated marijuana; and possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. Senate Bill 94 took effect on June 27, 2017 and blended together the non-medical marijuana regulations in the AUMA and the Medical Cannabis Regulation and Safety Act (“MCRSA”) to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). Pursuant to these laws, local agencies may impose reasonable regulations on indoor cultivation and regulate or ban outdoor cultivation or other cannabis land uses. The purpose of this Chapter is to implement reasonable regulations for cannabis land uses that protect the health, safety and welfare of the Town.

18.39.020 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth herein:

A. "Applicant" means a Person who meets the residency requirements of Section 18.39.140(B) and who has applied for a Permit under this Chapter.

B. "Application" means that form approved by the Town Planning and Building Director and provided by the Department in accordance with this Chapter for the purpose of seeking a Permit.

C. "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. 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 defined by Section 11018.5 of the Health and Safety Code.

D. "Cannabis Products" has the same meaning as in California Health and Safety Code Section 11018.1 as may be amended from time to time.

E. "Commercial Cannabis Activity" includes the Cultivation, Manufacturing, Distribution, Processing, warehousing, storing, Testing, packaging, labeling, transportation, delivery, Retail Sale of Cannabis and Cannabis Products or Cannabis events as provided for in this Chapter or under State rule, law, or regulation.

F. "Cultivation" means any activity involving the planting, growing, fertilizing, irrigating, harvesting, drying, curing, grading, trimming, and/or storing of Cannabis whether in or outdoors and the related sale of such cultivated Cannabis.

G. "Customer" means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation or a natural person 14 years of age or older with parental/guardian permission.

JH. "Department" means the Town of Portola Valley Planning and Building Department.

JK. "Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between Permittees.

LJ. "Indoor Cultivation" means Cultivation indoors using exclusively artificial lighting.

KM. “Manufacturing” means compounding, converting, producing, deriving, or preparing, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, Cannabis or Cannabis Products.

LN. “Mixed-Light Cultivation” means Cultivation using light deprivation and/or any combination of natural and supplemental artificial lighting. Greenhouses and similar structures or spaces of sufficient size to permit entry enclosed with a nonporous covering or light deprivation systems are included in this category. This category does not include structures constructed of porous cloth or other porous material(s).

MQ. “Outdoor Cultivation” means Cultivation using no artificial lighting conducted in the ground, in containers outdoors, or in structures constructed of porous material(s).

P. “Owner” means any of the following: [**Note: this definition is similar to State law and County Ordinance.**]

- ~~1. Owner of the Premises.~~
- ~~2. A Person with an aggregate ownership interest of 20 percent or more in the Permittee or Applicant, unless the interest is solely a security, lien, or encumbrance.~~
- ~~3. The chief executive officer of the Applicant or Permittee.~~
- ~~4. A member of the board of directors of the Applicant or Permittee.~~
- ~~5. An individual who is, or will be, participating in the direction, control, or management of the Permittee or Applicant. For the purposes of this Chapter, participating in the direction, control, or management includes, without limitation, the following functions: (i) hiring or separating employees; (ii) contracting for the purchase or sale of Cannabis or Cannabis Products; and (iii) making or participating in policy decisions regarding Commercial Cannabis Activities.~~

QQ. “Permit” or “Cannabis Permit” means a permit issued by the Town for Commercial Cannabis Activity permitted pursuant to this Chapter.

PR. “Permittee” means any ~~Applicant~~Person issued a Permit under this Chapter.

QS. “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company (LLC), estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

RT. “Premises” means the property specified in the Application that is owned, ~~leased, or otherwise held under the control of an~~ by the Applicant/~~or~~ Permittee where the Commercial Cannabis Activity will be or is conducted. The Application shall specify the area of land on the property and/or the structure or structures where Commercial Cannabis Activity will be or is conducted. The Premises shall be a contiguous area and shall only be occupied by one Permittee.

SU. “Retail Sale” means any transaction whereby, for any consideration, Cannabis or Cannabis Products is sold to a Customer, and includes the delivery of Cannabis or Cannabis Products.

T. “Sensitive Receptor” means schools providing education to K-12 grades, day care centers, Youth Centers, public parks, and Safe Routes to School trails. The Town shall maintain a publicly available list of Sensitive Receptors.

UV. “State” means the State of California.

VW. “State Permit” means a permit to conduct Commercial Cannabis Activity issued by the State.

WX. “Testing” means the testing of Cannabis or Cannabis Products by an authorized laboratory, facility, entity, or Person.

XY. “Youth Center” shall have the same meaning as defined by California Health and Safety Code Section 11353.1 and shall also include publicly owned facilities and properties that support activities for youth and children.

18.39.030 Prohibited and Permitted Commercial Cannabis Activities

A. Prohibited. Unless expressly authorized by this Chapter, no Commercial Cannabis Activities for either medical or personal purposes are allowed in the Town of Portola Valley. The intent of this Chapter is only to permit cultivation of up to 12 commercial cannabis plants on any single property in any residential ~~the RE or MR~~ zoning districts. No Permit for Commercial Cannabis Activity shall be issued for any other purpose or in any other zoning district, including but not limited to land zoned O-A or, C-C ~~or R-1~~.

B. Permitted with State and Local Permit. Only the following Commercial Cannabis activity may occur in the Town of Portola Valley pursuant to valid State and Town Permits:

1. Commercial Cultivation of Cannabis. Commercial cultivation of up to a maximum of twelve cannabis plants may be conducted subject to a Cannabis Permit only on residentially zoned lands ~~zoned RE or MR~~.

C. Permitted with State Permit. The following Commercial Cannabis activities may occur in the Town of Portola Valley pursuant to a valid State Permit:

1. Transportation of Cannabis on public roads as expressly authorized under California Business and Professions Code Section 26080(b).
2. Lawful delivery of Cannabis to a Customer on public roads; however, no physical location for such delivery service shall be permitted within the Town of Portola Valley.

18.39.040 Specific Non-Commercial Cannabis Activities Allowed

The following are exempt from the permitting requirements of this Chapter:

A. Personal Indoor Cultivation. A natural person 21 years of age or older who engages in Cannabis Cultivation, subject to the cultivation limit in subsection C below, exclusively for personal use inside a private residence or inside a permitted accessory structure to a private residence located upon the grounds of a private residence as authorized by California Health and Safety Code Section 11362.1.

B. Personal Outdoor Cultivation. A natural person 21 years of age or older who engages in Cannabis Cultivation, subject to the cultivation limit subject to the cultivation limit in subsection C below, exclusively for personal use outside a private residence as authorized by California Health and Safety Code Section 11362.1. Notwithstanding the foregoing, any personal outdoor cultivation shall be in compliance with the following requirements:

1. Shall not be in ordinary public view visible by normal unaided vision from public rights of way, publicly owned or maintained trails and public parks adjacent properties;

2. Shall be at least 600XX feet away from any Sensitive Receptor. The 600 feet shall be measured in a straight line from the closest property line of the sensitive receptor to the actual cultivation site; from _ and not visible by normal unaided vision from public roads and trails; and

3. The odor from cultivation must not be detectible off the grounds of the private residence or from any place accessible to the public.

C. Cultivation Limit. For both personal indoor cultivation and personal outdoor cultivation, not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. No Cannabis may be grown within the minimum setback required for the zoning district.

18.39.050 Town Commercial Cannabis Activity Permit Required

A. Any Person who intends to engage in a permitted Commercial Cannabis Activity in the Town shall obtain a Cannabis Permit in accordance with this Chapter for each Premises in the Town where proposed Commercial Cannabis Activity is to occur. A Cannabis Permit from the Town is not valid and the Commercial Cannabis Activity may not commence unless and until the Applicant obtains a valid license from the State for the same Commercial Cannabis Activity permitted by the Town. An Applicant shall provide a copy of the State license to the Department prior to commencing cultivation.

B. Any Cannabis Permit issued under this Chapter does not provide any protection or immunity for any Person from State or federal laws, or from prosecution pursuant to any applicable State or federal laws.

~~C. [Discuss whether Permittee can hold more than one permit and whether there should be a citywide cap.]~~

18.39.060 Commercial Cannabis Activity Application Requirements

A. Each Application shall be filed with the Town, under penalty of perjury on the form provided and in the manner required by the Department.

B. An Application shall not be deemed complete until all required Application fees have been paid, and all questions, comments and/or requests for information have been addressed to the satisfaction of the Planning and Building Director.

18.39.070 Review of Commercial Cannabis Activity Permits

A. Processing of Application. The Department will review the Application. The Department will provide a copy of the Application for review and comment to the San Mateo County Sheriff's Department and the Woodside Fire Protection District. The proposed Premises may be subject to an inspection by the Department, the Sheriff's Department and Fire District prior to the public hearing on the Application, which will not be set until the Department determines that the Application is complete. If the Department determines the Application is incomplete, the Department will provide notice to the Applicant, who shall have 30 days to complete all deficiencies. If the Applicant fails to complete the deficiencies within the 30-day period, the Application shall be deemed abandoned. The Applicant may reapply at any time following an abandoned Application. The Department will not refund any fees for incomplete or abandoned Applications.

B. Commercial Cannabis Permit Required. A Cannabis Permit shall be required for Commercial Cannabis Cultivation. The application procedures for the Cannabis Permit shall be as provided for in Chapter 18.72 of this title. The Planning Commission may grant a Cannabis Permit if it makes the following findings:

1. The proposed activity complies with the findings set forth in 18.72.130 (Conditional Use Permit findings).

2. The proposed activity is no more objectionable than the conditionally permitted used allowed in the underlying residential zone ~~listed activities~~ with respect to public safety, security, environmental impacts, level of noise, traffic, odors, glare and other impacts normally associated with other listed uses.

4. The proposed activity complies with all of the development criteria and operating requirements in Section 18.39.140.

5. The Applicant has an established account in a State-approved track and trace in accordance with Section 18.39.160.

6. The proposed activity complies with the requirements set forth in this Chapter and State law.

C. Duration of Permit. Each Permit shall be granted for a one-year period and shall expire one year after the date of its issuance. Nothing herein is intended to limit the number of times an Applicant may apply to renew the Cannabis Permit issued by the Town.

D. Permit Conditions. In addition to any conditions imposed by the Planning Commission, all Permits shall include statements conveying the following information, displayed prominently on the Permit itself:

1. A warning that Permittees, ~~Owners~~, supervisors, employees, and any other Persons involved in Commercial Cannabis Activities may be subject to prosecution under State or federal laws; and

2. An acknowledgment that, by accepting the Permit and engaging in a Commercial Cannabis Activity, the Permittee has released the Town and its officers, insurers, sureties, agents, Town Council members, attorneys, employees, and representatives from and against any all liability, and will defend and indemnify them, for any monetary damages related to or arising from issuance of the Permit, authorizing Permittee to engage in an authorized Commercial Cannabis Activity, enforcement of requirements or conditions related to the Permit, and/or revocation of the Permit.

3. All Cannabis Permits shall be valid only while the Permittee is in possession of a valid State license for the same cannabis activity authorized by the Town issued Cannabis Permit.

18.39.080 Grounds for Denial of an Application

A. The Planning Commission shall deny an Application for a Commercial Cannabis Permit for any of the following reasons:

1. The Planning Commission is unable to make the findings in Section 18.39.070(B) above.

2. The Applicant made a knowingly false statement of a material fact in the Application or knowingly omitted a material fact from the Application;

3. The proposed Commercial Cannabis Activities do not fully comply with the requirements of this Chapter or any State law or regulation;

4. The Applicant failed to provide all information required in the Application and/or failed to allow a pre-inspection of the proposed Premises;

5. An Applicant-Owner is subject to prosecution or has been convicted or sanctioned for an offense or violation set forth under California Business & Professions Code Section 26057(b)(4), (b)(6);

6. An Applicant-Owner has been sanctioned by the State or any other licensing authority for unauthorized Commercial Cannabis Activities or has had a State Permit or any other Permit for Commercial Cannabis Activities suspended or revoked in the three (3) years immediately preceding the date the Application is filed; or

7. Any other valid reason in the Planning Commission's reasonable discretion.

B. Notice of the decision to deny an Application specifying the reason(s) for the denial shall be provided in writing to the Applicant. The Applicant may appeal denial of its Application to the Town Council as set forth below in Section 18.39.090. No new Application(s) for a Permit on Premises where an Application has been denied shall be accepted for a period of one (1) year from the date of denial.

18.39.090 Appeal to Town Council

Action of the Planning Commission in approving or disapproving the grant of a Cannabis Permit may be appealed to the Town Council in accordance with Sections 18.78.010 through 18.78.110 or the Town Council may elect to review the action of the Planning Commission in accordance with the provisions of Section 18.78.120.

18.39.100 Permit Renewal

A. To renew a Permit, a completed Permit renewal Application on a form approved by the Planning and Building Director and renewal fee shall be received by the Department no fewer than sixty (60) calendar days before the expiration of the Permit. The Permit renewal Application shall not be deemed complete until all renewal fees have been paid. Upon receipt of a complete Permit renewal Application, the Department shall notify all adjacent property owners of the submittal at least 30 days prior to the issuance of the renewal.

B. In the event the Permit is not renewed prior to the expiration date, it shall be deemed expired and the Permittee must cease all Commercial Cannabis Activity until such time that the Permittee is issued a new Permit in accordance with this Chapter. The Permittee ~~and all Owners~~ will be subject to enforcement actions pursuant to Chapter 1.12, Code Compliance, for continuing operations after a Permit has expired without a renewal.

C. Permit renewal applications are subject to review and decision by the Planning and Building Director. The Planning and Building Director, however, has discretion to elevate any Permit renewal Application to the Planning Commission for review and decision. The Planning and Building Director shall deny any request for a Permit renewal for any of the following reasons:

1. The Permit renewal Application is filed fewer than sixty (60) calendar days before expiration of the Permit;
2. The Permittee does not fully comply with the requirements of this Chapter or any State rule, law, or regulation;
3. The Permittee has failed to provide all information required in the Permit renewal application and/or has failed to allow a requested inspection of the Premises;
4. The Permittee has any outstanding taxes, fees, or fines owed to the Department or to the Town;
5. The Permit is suspended or revoked at the time of the request for Permit renewal;
6. The Permittee is subject to prosecution or has been convicted or sanctioned for an offense or violation set forth under California Business & Professions Code Section 26057(b)(4), (b)(6);
7. The Permittee ~~or an Owner~~ has been sanctioned by the State or any other licensing authority for unauthorized Commercial Cannabis Activities or has had a State Permit or any other Permit, permit, or authorization for Commercial Cannabis Activity suspended or revoked between the time the original Permit was issued and the filing of the request for Permit renewal; or
8. The ~~Permittee~~ Applicant no longer has his or her primary domicile in the Town.

D. If a request for a Permit renewal is denied, a new Application may be filed pursuant to this Chapter. However, no new Application(s) for a Permit on Premises where an Application to renew a Permit has been denied shall be accepted for a period of six (6) months from the date of denial.

E. Notice of the decision to deny or approve a request for a Permit renewal specifying the reason(s) for the denial shall be provided in writing to the Permittee. The Permittee may appeal the denial of a request for a Permit renewal to the Planning Commission.

F. The Planning and Building Director shall provide an informational item to the Planning Commission regarding any and all Permit renewals prior to the effective date of the renewal. The informational report shall include, but not be limited to, any comments received on the Permittee's Commercial Cannabis Activities within the year prior to the renewal Application. The Planning Commission may request that a public hearing be conducted on any Permit renewal Application. The public hearing shall be conducted de novo pursuant to the criteria set forth in this section. The Planning Commission's decision shall be appealable to the Town Council. Any appeal to the Town Council shall be subject to a de novo public hearing pursuant to the criteria set forth in this section.

18.39.110 Permit Nontransferable

A. A Permit issued under this Chapter does not create any interest of value, is not transferable, and automatically terminates upon attempt to transfer of ownership of the Permit. Any change in the [Permittee's ownership](#) requires a new Application pursuant to Section 18.39.070. In the event a new Permit is not issued by the Town prior to transfer of ownership, the Permit shall be deemed revoked and any activities on the Premises for which the Permit was issued must cease all Commercial Cannabis Activity until such time that the new [owner](#) is issued a new Permit from the Department. The Permittee and all [owners of the Premises](#) will be subject to enforcement actions pursuant to Chapter 1.12, Code Compliance, for continuing operations after a Permit has expired without a renewal.

B. A Permit is issued to and covers only the Permittee with respect to the Premises identified on the Permit. The Permit does not run with the land.

18.39.120 Fees

The filing of an initial Application and/or an Application for renewal of a Permit shall be accompanied by payment of such fees as the Town Council may establish to recover the cost of administration and enforcement of this Chapter. Such fees are non-refundable. Applicants and Permittees are responsible for the costs of inspections, investigations, and any other activity required pursuant to this Chapter. All fees and costs specified by this Chapter shall be established by resolution of the Town Council and may be amended from time to time.

18.39.130 Taxes

All Permittees shall comply with any Town-imposed Commercial Cannabis Activity taxes that may be enacted.

18.39.140 Commercial Cannabis Development Criteria and Operating Requirements

A. A maximum of 12 plants may be grown on the Premises [for commercial purposes](#).

B. Applicant must have his or her primary domicile in the Town of Portola Valley.

1. If the Premises is owned by an individual, that individual must satisfy the residency requirements of this section.

2. If the Premises is not owned by an individual, the residency requirement shall be met by the Applicant's chief executive officer, a member of the Applicant's board of directors or a Person with an aggregate ownership interest of 20 percent or more in the Applicant.

C. Property Setbacks. Commercial Cannabis shall not be grown in the zoning setbacks for the Premises.

D. All Premises shall also be located a minimum of 600 feet ~~(State) or 1,000 feet (County)~~ from any ~~Sensitive Receptor school providing education to K-12 grades, public park, Youth Center, and any alcohol or drug treatment facility as defined by California Health and Safety Code Section 11834.02.~~ The 600 foot ~~or 1,000-foot~~ distance shall be measured in a straight line from the closest property line of the residentially designated or otherwise protected site to the closest property line of the parcel with the Cannabis Cultivation.

E. Surveillance and Security. Commercial Cannabis Activity shall comply with security requirements acceptable to the Department on an individual project basis. The security requirements may include provisions for perimeter fencing plan (compliant with Municipal Code Chapter 18.43, Fences), interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.

F. Ventilation. All Premises shall be equipped with odor control filtration and ventilation system(s) to control odors and mold to the reasonable satisfaction of the Planning and Building Director.

G. Inspections. Premises shall be subject to inspections by, without limitation, the Department, the Town of Portola Valley, County of San Mateo, the Woodside Fire Protection District, and any or agency, office or similar department thereof. Agents or employees of such agencies shall have unrestricted access to the Premises, including, without limitation, all rooms, buildings, structures, facilities, and limited access areas, for the purpose of conducting inspections. If a Permittee refuses or interferes with an inspection, the Permittee will be subject to enforcement efforts pursuant to Chapter 1.12, Code Enforcement and the Town may order the immediate cessation of all Commercial Cannabis Activities on the Premises.

H. Display of Permit. The current Permit, State Permit, and an emergency contact phone number shall be maintained on the Premises at all times and shall be immediately accessible upon request of any entity conducting an inspection.

I. No Consumption on Premises. Consumption of Commercial Cannabis shall not be allowed within 100 feet of the commercial Cultivation area. This provision is not intended to prohibit personal use by the ~~o~~Owner or occupant of the Premises.

J. Parking Requirements. Adequate on-site parking and delivery drop off and pick up zones shall be provided. No off-site parking shall be used in conjunction with the Commercial Cannabis Activity.

K. Notification to Department. A Permittee shall provide the Department with notice in writing, either by mail or e-mail to the attention of the Planning and Building Director, within 24 hours of the following:

1. A criminal conviction rendered against the ~~Owner, Permittee or any individual living on the Premises;~~
2. A civil penalty or judgment rendered against the Permittee;
3. Notice of revocation of a State Permit or other local authorization to conduct Commercial Cannabis Activities;
4. The Permittee becomes aware of, or has reason to suspect, a diversion, theft, loss, or any other criminal activity involving its Commercial Cannabis Activities.

L. Cultivation Types Allowed. The following State Permit types, as defined by California Business and Professions Code Section 26061, will be permitted in the Town, subject to issuance of a Commercial Cannabis Permit:

1. "Specialty Cottage Outdoor" is an outdoor Cultivation site with up to 12 mature plants.
2. "Specialty Cottage Indoor" is an indoor Cultivation site with up to 12 mature plants.
3. "Specialty Cottage Mixed-Light Tier 1 and 2" is a mixed-light Cultivation site with up to 12 mature plants.

M. Number of Permits. The Town ~~may issue up to~~ shall issue not more than 5 new permits ~~per year during the first year of this ordinance. During the second year following the effective date of this ordinance, and each year thereafter, the Town may issue up to five new permits provided that at any time there shall be no more than 10 issued permits.~~ There may not be more than one Permit issued per Premises. ~~{For Planning Commission discussion.}~~

N. Building Requirements. All structures used for Cultivation, including greenhouse or similar structures shall comply with all applicable State or local building and design review regulations, zoning, and land use requirements.

O. Fire Code Requirements. A Permittee shall prepare and implement a fire prevention plan, which shall include, at minimum, emergency vehicle access to the Premises vegetation management, and fire break maintenance around all structures. The plan for compliance with this Section shall be proposed at the Application stage and shall not be approved without the concurrence of the Woodside Fire Protection District Fire Marshall.

P. Lighting. All lighting visible from the exterior of the Cultivation area shall comply with the dark sky lighting requirements. Light shall not escape at a level that is visible from neighboring properties or the public right of way.

Q. Runoff and Storm water. Runoff containing sediment or other waste or byproducts, including, without limitation, fertilizers and pesticides, shall not be allowed to drain to the storm drain system, waterways, or adjacent lands, and shall additionally comply with all applicable State and federal regulations. A plan for compliance with this Section shall be proposed at the Application stage and included as a condition of approval.

R. Wastewater Discharge. Permittees shall submit verification of compliance with the Waste Discharge Requirements of the applicable Regional Water Quality Control Board, or waiver thereof. All domestic wastewater shall be disposed of in a permanent sanitary sewer or on-site wastewater treatment system (OWTS) with demonstrated adequate capacity. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, identify the amount of wastewater, excess irrigation, and domestic wastewater anticipated, as well as treatment and disposal facilities.

S. Pest Prevention. All Cannabis and Cannabis Products shall be kept commercially clean in respect to established pests of general distribution so that exposure to such pests is under effective control. Permittees shall comply with all applicable State and federal pesticide laws and regulations, including, without limitation, those enforced by the State Department of Pesticide Regulation. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, include the product name and active ingredient(s) of all pesticides to be applied to Cannabis during any stage of plant growth and integrated pest management protocols, including chemical, biological, and cultural methods the Permittee anticipates using to control or prevent the introduction of pests on the Cultivation Site.

T. Energy Use. Electrical power, including, without limitation, for illumination, heating, cooling, and ventilation, shall be provided by 100% renewable energy source or on-site zero net energy renewable source. A plan for compliance with this Section shall be proposed at the Application stage.

U. Noise Limits. Noise generated at the Premises shall comply with the Town's Noise Control requirements.

V. Hazardous Materials. No hazardous materials shall be used in conjunction with the cultivation of cannabis at the Premises.

W. Waste Management. All Cannabis waste must be properly stored and secured to prevent access by the public. All garbage and refuse on the Cultivation Site shall be accumulated or stored in nonabsorbent, water-tight, vector resistant, durable, easily cleanable, galvanized metal or heavy plastic containers with tight fitting lids. No refuse container shall be filled beyond the capacity to completely close the lid. No garbage and refuse generated in conjunction with the cultivation of cannabis shall be allowed to

accumulate for more than seven (7) calendar days, and shall be properly disposed of before the end of the seventh (7th) day. All non-Cannabis waste, including, without limitation, refuse, garbage, green waste, and recyclables, must be disposed of in accordance with Town and State codes, laws and regulations. A plan for compliance with this Section shall be proposed at the Application stage. The plan must address the storing, handling, and disposing of all waste by-products of Cultivation and, at minimum, characterize the anticipated amount and types of waste generated, identify the designated holding area(s) for Cannabis waste, and describe the operational measures that are proposed to manage, track/identify, and dispose of Cannabis waste in compliance with County and State standards.

X. Water Usage. Permittees must identify a water supply source adequate to meet all Cultivation uses on a sustainable basis for the Premises, provide the Department with proposed conservation measures, demonstrate that Permittee is in compliance with all statutes, regulations, and requirements of the State Water Resources Control Board, Division of Water Rights, and allow the Department and/or other County departments access to the Premises to monitor water usage. Domestic water sources must be from a source permitted by the Town. A plan for compliance with this Section shall be proposed at the Application stage.

Y. Insurance Requirements: A Permittee shall maintain insurance in the amounts and of the types that are acceptable to the Town Manager or his or her designee. The Town of Portola Valley shall be named as additional insured on all city-required insurance policies.

Z. Indemnity: To the extent permitted by law, the Applicant shall indemnify, defend and hold harmless the Town, its Town Council, its officers, attorneys, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the activity subject of the Cannabis Permit, including (without limitation) reimbursing the Town for its actual attorneys' fees and costs incurred in defense of the litigation. The Town may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

18.39.150 Record Retention

A. A Permittee shall keep and maintain the following records for at least seven (7) years from the date of permit issuance by the Town:

1. Financial records including, without limitation, bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization, other State of California agencies, the Department, or other County departments;

2. Personnel records, including each employee's full name, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable;

3. Training records, including, without limitation, the content of the training provided and the names of the employees that received the training;

4. Contracts with other Permittees;

5. Limited-access area logs and copies of current versions of any applicable plans required under this Chapter, including, without limitation, security plan, waste disposal plan, water management plan, water conservation plan, access restriction procedures, record keeping policy, odor and ventilation measures, energy usage plan, fire prevention plan, parking plan, and pest management plan; and

6. State Permit and permits, Permits, and other local Permits, permits, or authorizations to conduct Commercial Cannabis Activity.

B. A Permittee shall provide all books and records for review by the Department or its designee upon request. Records shall be kept in a manner that allows the Department, or its designee, to review the records in either hard copy or electronic form, whichever the Department requests. A Permittee may contract with a third party to provide custodial or management services of the records; however, such a contract shall not relieve the Permittee of its responsibilities under this Chapter.

18.39.160 Track and Trace Program

A. A Permittee must have an established account in a State-approved track and trace system prior to engaging in any Commercial Cannabis Activities. A Permittee may use any track and trace program approved by State agencies and shall comply with all State laws, rules, and regulations relating to track and trace, including, without limitation, system unique identifier (UID) requirements, user requirements, reporting requirements, and inventory requirements.

B. The Permittee is responsible for the accuracy and completeness of all data and information entered into the track and trace system. Data entered into the track and trace system must be accurate. Inaccuracies, if not corrected, may result in enforcement action against the Permittee.

C. The Permittee shall designate at least one track and trace system administrator who shall complete initial training prior to accessing the system and participate in ongoing training as required by the Department, the State, and/or their respective agents/designees. The designated administrator must maintain an accurate and complete list of any other track and trace system administrators and users and update the list immediately when changes occur.

D. It is a violation of this Chapter for any Person to intentionally misrepresent or falsify information entered into the track and trace system. The Permittee shall monitor all notifications from the track and trace system and resolve all the issues included in the notification in the time frame specified in the notification. A Permittee shall not dismiss a notification from the track and trace system until the Permittee resolves the issues identified in the notification.

18.39.170 Revocation or Suspension of Permit

A. Any of the following shall be grounds for revocation or suspension of a Permit:

1. Failure to comply with the terms and conditions of the Permit.

2. Any act or omission that violates the requirements of this Chapter, the County Code, or State rule, law, or regulation.

3. Any act or omission that results in the denial, revocation, or suspension of the Permittee's State Permit.

4. The Permit was granted on the basis of false material information, or written or oral, provided knowingly or negligently by the Permittee.

5. Conduct of Commercial Cannabis Activities in a manner that constitutes a nuisance, where the Permittee has failed to comply with reasonable conditions to abate the nuisance.

6. The Permittee no longer meets the residency requirements of this chapter.

B. Revocation or suspension proceedings shall be conducted in accordance with Chapter 1.12, Code Compliance.

13.39.180 Enforcement and Penalties

A. Any activity in violation of this Chapter is hereby deemed a per se nuisance.

B. As part of any code compliance efforts, any Permittee found to be in violation of this Chapter shall be assessed in addition to the cost of code compliance a penalty in the amount of three times (3x) the amount of the Permit fee.

C. The remedies in this Chapter are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided in this Chapter are cumulative and not exclusive.

2. AMENDMENT OF CODE. Subsection Q is hereby added to Section 8.12.010 [Definition of nuisance] of Chapter 8.12 [Nuisance Abatement] of Title 8 [Health & Safety] is amended to read as follows:

"Q. A Commercial Cannabis Activity emitting odors that are detectible off site."

3. ~~3.~~ ANNUAL REVIEW. For five years following adoption of this Ordinance, the Planning Commission shall conduct an annual review of this Ordinance. This annual review shall include the number of applications received, the number of permits issued, the number of complaints received and an assessment of whether modifications to the ordinance are required. Following the first annual review, in the Council's reasonable discretion, the Council may direct the Planning Commission to extend the time periods for the review or to eliminate such review altogether.

4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The Town Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

54. SEVERABILITY. If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or the applicability of this ordinance to other situations.

65. EFFECTIVE DATE AND POSTING. This ordinance shall become effective 30 days after the date of its adoption and shall be posted within the Town in three public places.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST

APPROVED

Town Clerk

Mayor

APPROVED AS TO FORM

Town Attorney

An Act

HOUSE BILL 17-1220

BY REPRESENTATIVE(S) Becker K. and Wist, Carver, Esgar, Landgraf, Lawrence, Pabon, Thurlow, Van Winkle, Young, Arndt, Beckman, Covarrubias, Garnett, Ginal, Liston, Lundeen, McKean, Navarro, Nordberg, Pettersen, Ransom, Sias, Willett, Wilson, Gray, Hamner, Hooton, Kennedy, Kraft-Tharp, Neville P., Valdez, Williams D., Duran; also SENATOR(S) Gardner and Fields, Priola, Cooke, Court, Crowder, Hill, Holbert, Lambert, Martinez Humenik, Neville T., Smallwood, Tate, Todd, Williams A., Grantham.

CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO THE ILLEGAL MARKET.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Through citizen-initiated measures, Colorado provided its citizens protections for the cultivation and use of medical marijuana in 2000 and recreational marijuana in 2012;

(b) One of the reasons behind these citizen-initiated measures was to erode the black market for marijuana in Colorado;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) The constitutional provisions for both medical marijuana and recreational marijuana provide protections for personal marijuana cultivation, but these provisions are silent on the question of where marijuana plants may be grown or processed for medical or recreational use;

(d) Although the authority for marijuana cultivation for both medical and recreational marijuana is generally limited to six plants per person, some provisions allow individuals to grow more plants. In the medical marijuana code, a patient can grow an "extended plant count" if his or her physician, who makes the medical marijuana recommendation, also determines the patient has a medical necessity for more than six plants. As well, a primary caregiver can grow medical marijuana for each of the patients that he or she serves.

(e) The extended plant count and primary caregiver provisions have created a situation in which individuals are cultivating large quantities of marijuana in residential homes;

(f) These large-scale cultivation sites in residential properties create a public safety issue and are a public nuisance. A site in a residential property can overburden the home's electrical system, resulting in excessive power use and creating a fire hazard that puts first responders at risk. A site can also cause water damage and mold in the residential property. A site in a residential property can produce a noxious smell that limits the ability of others who live in the area to enjoy the quiet of their homes. Often the site is a rental home, and the renters cause significant damage to the home by retrofitting the home to be used as a large-scale cultivation site. When residential property is used for a large-scale cultivation site, it often lowers the value of the property and thus the property value of the rest of the neighborhood. Finally, a site in a residential property can serve as a target for criminal activity, creating an untenable public safety hazard.

(g) Large-scale, multi-national crime organizations have exploited Colorado laws, rented multiple residential properties for large-scale cultivation sites, and caused an influx of human trafficking and large amounts of weapons as well as the potential for violent crimes in residential neighborhoods;

(h) Large-scale cultivation sites in residential properties have been used to divert marijuana out of state and to children.

(2) Therefore, the general assembly determines that it is necessary to impose reasonable limits on residential marijuana cultivation that do not encroach on the protections afforded Colorado citizens in the Colorado constitution.

SECTION 2. In Colorado Revised Statutes, 18-18-406, amend (3)(a); and add (3)(c) as follows:

18-18-406. Offenses relating to marijuana and marijuana concentrate - definition. (3) (a) (I) It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls.

(II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY CULTIVATE, GROW, OR PRODUCE MORE THAN TWELVE MARIJUANA PLANTS ON OR IN A RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE THAN TWELVE MARIJUANA PLANTS TO BE CULTIVATED, GROWN, OR PRODUCED ON OR IN A RESIDENTIAL PROPERTY.

(B) EXCEPT AS PROVIDED IN SECTION 25-1.5-106 (8.5)(a.5)(I) OR SECTION 25-1.5-106 (8.6)(a)(I.5) FOR A MEDICAL MARIJUANA PATIENT OR A PRIMARY CAREGIVER WITH A TWENTY-FOUR-MARIJUANA-PLANT-COUNT EXCEPTION TO SUBSECTION (3)(a)(II)(A) OF THIS SECTION, IT IS NOT A VIOLATION OF SUBSECTION (3)(a)(II)(A) OF THIS SECTION IF A COUNTY, MUNICIPALITY, OR CITY AND COUNTY LAW EXPRESSLY PERMITS THE CULTIVATION, GROWTH, OR PRODUCTION OF MORE THAN TWELVE MARIJUANA PLANTS ON OR IN A RESIDENTIAL PROPERTY AND THE PERSON IS CULTIVATING, GROWING, OR PRODUCING THE PLANTS IN AN ENCLOSED AND LOCKED SPACE AND WITHIN THE LIMIT SET BY THE COUNTY, MUNICIPALITY, OR CITY AND COUNTY WHERE THE PLANTS ARE LOCATED.

(III) A person who violates the provisions of ~~this subsection~~ (3) SUBSECTION (3)(a)(I) OF THIS SECTION commits:

(H) (A) A level 3 drug felony if the offense involves more than thirty

plants;

(H) (B) A level 4 drug felony if the offense involves more than six but not more than thirty plants; or

(H) (C) A level 1 drug misdemeanor if the offense involves not more than six plants.

(IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (3)(a)(II)(A) OF THIS SECTION COMMITS:

(A) A LEVEL 1 DRUG PETTY OFFENSE FOR A FIRST OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE PLANTS, AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF UP TO ONE THOUSAND DOLLARS;

(B) A LEVEL 1 DRUG MISDEMEANOR FOR A SECOND OR SUBSEQUENT OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE BUT NOT MORE THAN TWENTY-FOUR PLANTS; OR

(C) A LEVEL 3 DRUG FELONY FOR A SECOND OR SUBSEQUENT OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWENTY-FOUR PLANTS.

(V) PROSECUTION UNDER SUBSECTION (3)(a)(II)(A) OF THIS SECTION DOES NOT PROHIBIT PROSECUTION UNDER ANY OTHER SECTION OF LAW.

(c) FOR PURPOSES OF THIS SUBSECTION (3):

(I) "FLOWERING" MEANS THE REPRODUCTIVE STATE OF THE CANNABIS PLANT IN WHICH THERE ARE PHYSICAL SIGNS OF FLOWER BUDDING OUT OF THE NODES IN THE STEM.

(II) "PLANT" MEANS ANY CANNABIS PLANT IN A CULTIVATING MEDIUM WHICH PLANT IS MORE THAN FOUR INCHES WIDE OR FOUR INCHES HIGH OR A FLOWERING CANNABIS PLANT REGARDLESS OF THE PLANT'S SIZE.

(III) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION. "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON WITH

THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

SECTION 3. In Colorado Revised Statutes, 25-1.5-106, amend (7)(e)(I)(A); and add (2)(e.3), (8.5)(a.5), (8.5)(b.5), (8.6)(a)(I.5), and (8.6)(a)(I.6) as follows:

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION. "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

(7) **Primary caregivers.** (e) (I) (A) In order to be a primary caregiver who cultivates medical marijuana for his or her patients or transports medical marijuana for his or her patients, he or she shall also register with the state licensing authority AND COMPLY WITH ALL LOCAL LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS. A person may not register as a primary caregiver if he or she is licensed as a medical marijuana business as described in part 4 of article 43.3 of title 12 ~~C.R.S.~~; or a retail marijuana business as described in part 4 of article 43.4 of title 12. ~~C.R.S.~~ An employee, contractor, or other support staff employed by a licensed entity pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~; or working in or having access to a restricted area of a licensed premises pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~; may be a primary caregiver.

(8.5) **Encourage patient voluntary registration - plant limits.** (a.5) (I) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A RESIDENTIAL PROPERTY MORE THAN TWELVE MARIJUANA PLANTS REGARDLESS OF THE

NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY; EXCEPT THAT IT IS UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON OR IN A RESIDENTIAL PROPERTY MORE THAN TWENTY-FOUR MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY IF A PATIENT:

(A) LIVES IN A COUNTY, MUNICIPALITY, OR CITY AND COUNTY THAT DOES NOT LIMIT THE NUMBER OF MARIJUANA PLANTS THAT MAY BE GROWN ON OR IN A RESIDENTIAL PROPERTY;

(B) REGISTERS PURSUANT TO THIS SUBSECTION (8.5) WITH THE STATE LICENSING AUTHORITY'S REGISTRY; AND

(C) PROVIDES NOTICE TO THE APPLICABLE COUNTY, MUNICIPALITY, OR CITY AND COUNTY OF HIS OR HER RESIDENTIAL CULTIVATION OPERATION IF REQUIRED BY THE JURISDICTION. A LOCAL JURISDICTION SHALL NOT PROVIDE THE INFORMATION PROVIDED TO IT PURSUANT TO THIS SUBSECTION (8.5)(a.5)(I)(C) TO THE PUBLIC, AND THE INFORMATION IS CONFIDENTIAL.

(II) A PATIENT WHO CULTIVATES MORE MARIJUANA PLANTS THAN PERMITTED IN SUBSECTION (8.5)(a.5)(I) OF THIS SECTION SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE ABOUT THE CULTIVATION OPERATION. CULTIVATION OPERATIONS CONDUCTED IN A LOCATION OTHER THAN A RESIDENTIAL PROPERTY ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

(b.5) A PATIENT WHO CULTIVATES HIS OR HER OWN MEDICAL MARIJUANA PLANTS SHALL COMPLY WITH ALL LOCAL LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS.

(8.6) Primary caregivers plant limits - exceptional circumstances. (a) (I.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE ON A RESIDENTIAL PROPERTY MORE THAN TWELVE MARIJUANA

PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY; EXCEPT THAT IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE ON OR IN A RESIDENTIAL PROPERTY MORE THAN TWENTY-FOUR MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY IF A PRIMARY CAREGIVER:

(A) LIVES IN A COUNTY, MUNICIPALITY, OR CITY AND COUNTY THAT DOES NOT LIMIT THE NUMBER OF MARIJUANA PLANTS THAT MAY BE GROWN ON OR IN A RESIDENTIAL PROPERTY;

(B) IS REGISTERED PURSUANT TO THIS SUBSECTION (8.6) WITH THE STATE LICENSING AUTHORITY'S REGISTRY; AND

(C) PROVIDES NOTICE TO THE APPLICABLE COUNTY, MUNICIPALITY, OR CITY AND COUNTY OF HIS OR HER RESIDENTIAL CULTIVATION OPERATION IF REQUIRED BY THE JURISDICTION. A LOCAL JURISDICTION SHALL NOT PROVIDE THE INFORMATION PROVIDED TO IT PURSUANT TO THIS SUBSECTION (8.6)(a)(I.5) TO THE PUBLIC, AND THE INFORMATION IS CONFIDENTIAL.

(I.6) ANY PRIMARY CAREGIVER WHO CULTIVATES MORE MARIJUANA PLANTS THAN PERMITTED IN SUBSECTION (8.6)(a)(I.5) OF THIS SECTION SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE ABOUT THE CULTIVATION OPERATION. CULTIVATION OPERATIONS CONDUCTED IN A LOCATION OTHER THAN A RESIDENTIAL PROPERTY ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES SUBSECTION (8.6)(a)(I) OF THIS SECTION IS SUBJECT TO THE OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

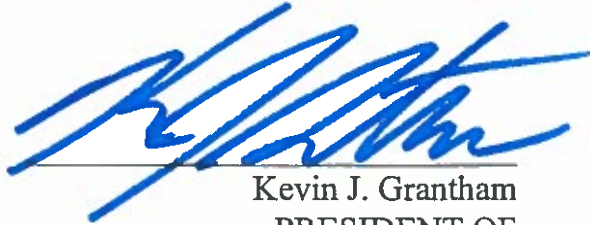
SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the

governor.

(2) Section 2 of this act applies to offenses committed on or after the applicable effective date of this act.



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Kevin J. Grantham
PRESIDENT OF
THE SENATE



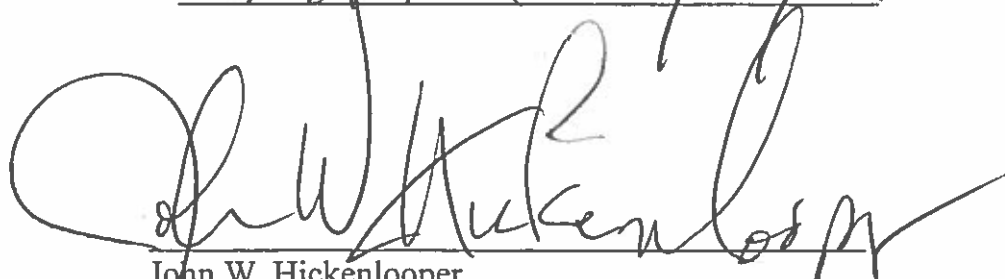
Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE

APPROVED

3:21 PM 6/8/17



John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

List of Sensitive Receptors – Portola Valley Cannabis Ordinance

Updated February 14, 2018

1. Windmill School – 900 Portola Road
2. Creekside Learning Lab – 884 B-1 Portola Road
3. Christ Church – 815 Portola Road
4. Ormondale School – 200 Shawnee Pass
5. Corte Madera School – 4575 Alpine Road
6. Woodside Priory School – 302 Portola Road
7. Ladera Church – 3300 Alpine Road
8. Town Hall 765 Portola Road
9. Rossotti Field – 3919 Alpine Road
10. Ford Field – 3399 Alpine Road
11. Alpine Hills Swim & Tennis Club – 4139 Alpine Road
12. Triangle Park

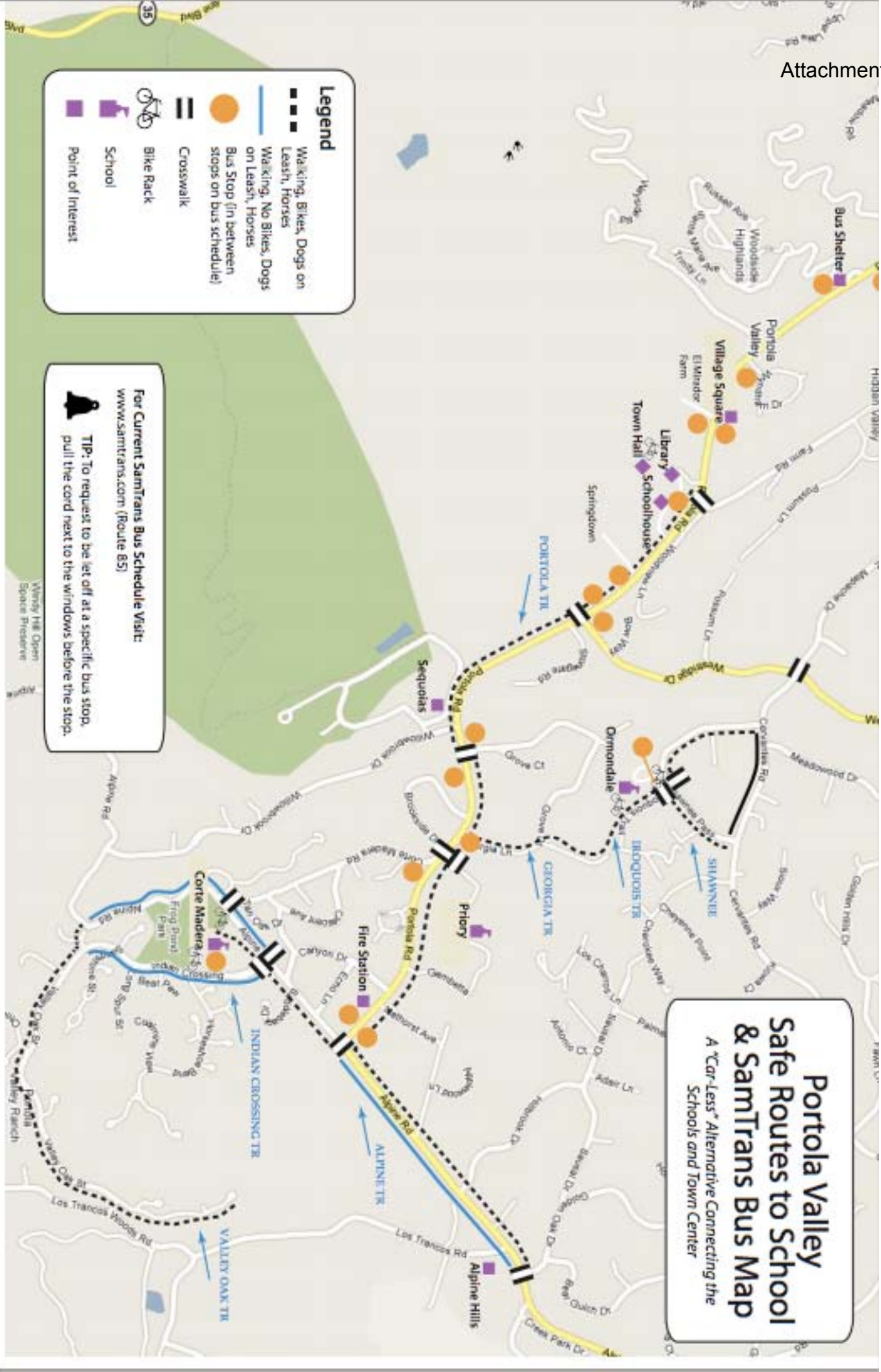
Legend

- Walking, Bikes, Dogs on Leash, Horses
- Walking, No Bikes, Dogs on Leash, Horses
- Bus Stop (in between stops on bus schedule)
- Crosswalk
- Bike Rack
- School
- Point of Interest

For Current SamTrans Bus Schedule Visit:
www.samtrans.com (Route 85)

TIP: To request to be let off at a specific bus stop, pull the cord next to the windows before the stop.

Portola Valley Safe Routes to School & SamTrans Bus Map
 A "Car-Less" Alternative Connecting the Schools and Town Center



Peak Motorization: Measuring Rates of Auto Ownership and Distances Driven

Passenger vehicle ownership and vehicle miles traveled per person and per household remain below their historic peaks set in 2006 and 2004, respectively, but they have been on the upswing for the past four to five years, according to new data.

February 11, 2018, 11am PST | [Irvin Dawid](#)



ilozavr / [Shutterstock](#)

University of Michigan transportation researcher [Michael Sivak](#) released his 10th "[peak motorization](#)" report last month [see [abstract \(pdf\)](#)] in a series that began June 2013. Sivak, who founded and directs [Sustainable Worldwide Transportation](#) at the [University of Michigan Transportation Institute](#) (UMTRI), focuses on two aspects of "[peak car](#):" changes in [ownership](#) of passenger vehicles and distance driven, or [vehicle miles traveled](#) (VMT).

Both are measured as rates, per person and per household, as opposed to total VMT, which the [Federal Highway Administration](#) reports monthly in [Traffic Volume Trends](#). The period examined was 1984 to 2016.

- Auto ownership per person measured 0.766 in 2016, highest since 2008. Measured per household, it was 1.968, highest since 2009. [Peaks for both rates were set in 2006]
- VMT per person was 8,819 miles, highest since 2007. Measured per household, it was 22,649 miles, also highest since 2007. [Peaks for both rates set in 2004]

Southern California comparison

[According to research](#) released last month by the UCLA-Institute of Transportation Studies on causes for the [decline in public transit ridership](#) in Southern California, increased auto ownership was the primary reason.

Between 2000 and 2015, private vehicle ownership dramatically increased among households in the [Southern California Association of Governments](#) region, from 1.7 to 2.4 vehicles per household.

Contrast those nationwide rates provided by Dr. Sivak: 2.031 vehicles per HH in 2000 to 1.950 per HH in 2015. The UMTRI data would appear to more than verify the findings of UCLA-ITS in pointing to increased car ownership as the primary reason for the decline in transit ridership in Southern California.

FULL STORY: [On the road again: Vehicle ownership, miles driven continue to rise](#)

Published on Tuesday, January 23, 2018 in *University Of Michigan*

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MORE

Berkeleyside

CITY

With Berkeley housing prices so high, school district ponders building homes for its teachers

By Natalie Orenstein, Dec. 5, 2017, 3 p.m.



Teachers at Berkeley High. BUSD employs about 1,250 people, 800 of whom filled out a staff survey on workforce housing. Three-quarters expressed interest in the district developing housing. Photo: Natalie Orenstein

Some adults move back in with their parents when they lose their jobs or hit hard times. Not Chloe Smith. The English teacher, who is in her mid-30s, moved back to her family's home in Albany after accepting a job offer.

It was the only way she figured she could live near her new position at Willard Middle School.

"I'm really fortunate I have that relationship," said Smith, who has worked at Willard for three years now. "I don't really see a way of having my own place, let alone owning my own place on a teacher's salary" in the Bay Area.

Smith is among a number of teachers and staff in Berkeley who have found unconventional accommodations amid an affordability crisis. Some cross multiple city lines during their

commutes, and others live in constant fear of rent hikes.

Most of "the ones who live in Berkeley have had houses for more than 15 years," Smith said.

In an attempt to retain teachers like Smith, and to attract new ones, Berkeley Unified is considering developing low-rent housing for its workforce. The new housing could be funded through a bond measure on the ballot in 2018 or 2020, or through a public-private partnership wherein a developer would be able to build market-rate housing alongside the workforce housing.

Both Oakland and San Francisco, which have faced massive teacher shortages, are pursuing similar projects. The California Teacher Housing Act of 2016 gave districts permission to use their property to develop affordable rental housing for low- or moderate-income employees.

The Berkeley School Board first discussed the possibility of building employee housing — for both certified and classified staff — in March. President Josh Daniels has worked with BUSD and city staff to analyze feasibility. The board, expressing initial interest but some skepticism about the financials, decided earlier this year to conduct a preliminary survey of BUSD employees, to gauge their interest and understand their current housing situations.

At its Wednesday meeting, the School Board will discuss the results of the survey and consider possible actions. More than 800 employees, or around 60% of the workforce, responded to the

optional survey, which BUSD conducted with UC Berkeley's Center for Cities & Schools.

The results, some of which are available on the School Board meeting agenda, show that 30% of the respondents live in Berkeley, and 21% commute more than 40 minutes each way.

That is only half of the time it takes Willard P.E. teacher David Perry to drive from Hercules to South Berkeley. He and his family began renting there after being forced to short-sell their home during the foreclosure crisis.

Perry has five kids, and “there is no way I could afford a three-bedroom house in Berkeley,” he told Berkeleyside. A product of King Middle School and Berkeley High himself, Perry always hoped to land a job in the district, and feels an attachment to Berkeley that has prompted him to stay with BUSD despite the hours he spends on the freeway. He thinks he can make it work, at least until the two kids of his who are at Berkeley schools, and who carpool with Perry, graduate.



Berkeley High teacher turnover has increased along with housing prices, said long-time teacher Alan Miller. Photo: Natalie Orenstein

Unlike Perry, more than half the renters who responded to the BUSD survey said they have considered leaving the district due to high housing costs in the Bay Area. Additionally, 69% of the renters who took the survey think housing costs will negatively impact their long-term ability to stay with BUSD. Half of all respondents said they

had a colleague who left the district because of housing costs — a new phenomenon, according to veteran teachers.

“When I came to Berkeley High we had no turnover, practically,” said Alan Miller, who has taught English since 1990. “There’s a value in keeping people. We’re not interchangeable parts. Institutional memory is really important.” Research has suggested student achievement suffers when turnover rates rise.

Three-quarters of BUSD staff report interest in district housing

More than three-quarters of the renters who responded to the BUSD survey said they are experiencing financial pressure due to housing costs. Homeowners who responded reported slightly more stability, with 45% experiencing financial pressure due to housing costs, 27% believing the costs will make it difficult to stay at BUSD long-term and 23% reporting they have considered leaving the district due to high housing costs.

Out of all the respondents, 42% own their residence, and 58% are renting or crashing with friends or family.

The survey results indicate high interest in workforce housing from employees who currently rent. About three-quarters of both the classified staff and certified teachers who responded said they would be interested in district housing. Among certified employees, those with moderate incomes expressed the most interest, whereas among classified staff, those with very low incomes were most excited by the concept. (See chart below for income levels.)

Berkeley employee salaries range widely, from about \$43,000 to \$90,000 for K-12 teachers, and less for many classified staffers.



Many rental prices are out of reach for teachers. Photo: Melati Citrawireja

One Berkeley High classified employee who asked to remain anonymous said she could not afford a place in Berkeley.

“The rent currently would be what I take home every month,” she said. The employee, who rents in Oakland with her family, was pleasantly surprised to get approved for a home loan recently, but “the sparkle faded” when she realized she still did not have the budget to buy.

According to the survey, young employees, meaning those under age 35, feel the most financial pressure, are the most likely to have considered leaving BUSD and are most interested in district housing, note BUSD staff on the School Board agenda. Some older or longer-term employees told Berkeleyside they were lucky to have bought a house when they could, or have found creative solutions. Willard inclusion support teacher Robert Chamberlain has “co-housed” with other couples and an in-law, including another BUSD teacher, for more than a decade. They still have high housing costs, but save money by pooling their incomes in some cases, he said.

Some employees with school-aged children have an incentive to continue working for the district, even if they live outside of Berkeley, as staff are eligible for inter-district permits to send their kids to Berkeley schools.

Who would the housing serve?

Some teachers and staff who spoke with Berkeleyside agreed that district housing could benefit younger employees, but said they feared it would miss a major segment of the workforce.

“It seems like it would be a good way to attract new teachers or young teachers, but I wouldn’t necessarily say it would be a retention strategy for existing teachers,” said Alex Day, a Berkeley High history teacher.

Day is among those teachers who assume they will have to leave the district someday soon. The threat of being priced out has already affected his decisions at work. He does not want to teach a new ethnic studies and social living course — part of the “universal 9th grade” program launching next year — because it is unique to BUSD, and he fears it will make him a less marketable candidate if he is forced to move and find a job elsewhere. Instead, he is focusing on teaching a transferable world history course.

Household Size	1 Person	2 Person	3 Person	4 Person
Extremely Low (30%)	\$21,950	\$25,050	\$28,200	\$31,300
Very Low Income (50%)	\$36,550	\$41,750	\$46,950	\$52,150
Low Income (80%)	\$56,300	\$64,350	\$72,400	\$80,400
Median Income (100%)	\$68,200	\$77,900	\$87,650	\$97,400
Moderate Income (120%)	\$81,850	\$93,500	\$105,200	\$116,900

BUSD is working from area median income limits established by the federal and state government.
Screenshot: BUSD

Day currently rents in Berkeley with his wife and their new baby. They will likely move into a family home when its owners leave town for a few years soon — the mortgage is cheaper than the rent they currently pay

— but they would like to find a home to raise their child in when the owners return. They have already begun checking out places in Sacramento and were eyeing Santa Rosa before deadly fires ravaged the already limited housing stock.

For Day, a Berkeley High graduate himself, the thought of leaving Berkeley can be hard to stomach.

“My wife’s definitely more realistic about it,” he said. “I get all grumpy and emotional thinking about it, so I try not to. That’s why I really networked to get a job here — Berkeley’s my community. I feel like I do my best work when I know the situations where kids are coming from,

since I grew up with kids coming from those situations.”

Day and several others said financial assistance from the district — whether in the form of a housing stipend, a no- or low-interest mortgage loan or a simple salary increase — would be more of a draw for them than a subsidized apartment. The district has said its analysis showed that building new rental housing would be the most effective approach, however.

As more schools districts consider tackling teacher shortages and housing insecurity with new construction, policy analysts have cautioned them about the challenges of complying with local tenant protections, finding an interested and appropriate developer, managing the properties and, of course, financing the projects.

Early estimates find \$32M to \$74M price tag

What district and city staff have put forth as possibilities for financing employee housing include a bond measure by either BUSD or the city of Berkeley on the November 2018 ballot, or the inclusion of housing funds in the school facilities bond measure already planned for 2020. The 2020 option would cost the district up to \$50,000 less. Through the public-private partnership approach, BUSD would enter into a decades-long lease with a developer, allowing the construction of low-rent and market-rate housing, which would become district property when the lease expired. According to staff, at least half of the housing built under this model would be market-rate, and open to anyone who could afford it.

The city of Berkeley would be responsible for permitting the projects under any of the financing approaches.

At an August School Board meeting, district staff pointed to four possible locations for workforce housing, but did not recommend any in particular and noted that each has constraints or other designated uses. The locations included the West Campus at 1222 University Ave., the maintenance facility at Oregon and Russell streets, the Berkeley Adult School parking lot at 1720 San Pablo Ave. or the former site of the Berkeley High tennis courts at 2309 Milvia St.

Very early cost estimates range from \$32 million to \$74 million for each site. Other possibilities under consideration are a property swap with the city or the pursuit of permits to develop on a property where current zoning code prohibits this kind of construction.

Smith, the English teacher living with her parents, said she is skeptical that workforce housing would serve most of her colleagues, but said she would be interested in renting an apartment herself.

In Smith’s view, school districts have a responsibility to support employees who are struggling to live where they work, but she is not sure how much capacity they have to alleviate what she considers a systemic issue.

“This is not a one-district problem,” she said. “The amount teachers are paid in society and our country is not commensurate with the amount we give. That’s not something BUSD can solve themselves.”

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PLANNING COMMISSION REGULAR MEETING, TOWN OF PORTOLA VALLEY, FEBRUARY 7 2018, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Targ called the Planning Commission regular meeting to order at 7:00 p.m. Interim Planning Director Cassidy called the roll.

Present: Commissioners Gilbert, Hasko, and Taylor; Vice Chair Goulden; Chair Targ

Absent: None

Staff Present: Arly Cassidy, Interim Planning Director
Cara Silver, Town Attorney

ORAL COMMUNICATIONS

None.

OLD BUSINESS

1. Recommendation to Town Council on Proposed Ordinance Adding Chapter 18.39 [Cannabis Land Uses] and Amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code

Town Attorney Cara Silver presented the recommendation by staff and the Cannabis Subcommittee regarding a proposed ordinance addition and section amendment, as detailed in the staff report.

Vice Chair Goulden reported on the Cannabis Subcommittee's discussions, research, studies, and findings regarding the need for local regulations and what is appropriate for Portola Valley. Chair Targ discussed the comments made by the Fire Marshal and San Mateo County Narcotics regarding the importance of being able to police and inspect at a localized level and whether or not Portola Valley has an administrative infrastructure able to address this emerging need. He said these considerations affect the scale by which the Town wants to approach cultivation, manufacturing, and distribution.

Chair Targ invited questions from the Commissioners.

Commissioner Gilbert asked if a greenhouse was considered indoor or outdoor. Town Attorney Silver said if a building has a roof and four walls and a foundation, it is considered indoor.

In response to Commissioner Gilbert's question, Town Attorney Silver and Interim Planning Director Cassidy explained the differences between RE and R1 zoning designations.

In response to Commissioner Hasko's question, Town Attorney Silver said the cannabis definition for the ordinance came from the State law, which is also used by the County.

Commissioner Hasko asked if the definition of youth center covered the Nathhorst Triangle. Town Attorney Silver said under the State definition of youth center, it would not apply to Nathhorst, so staff expanded that definition to include Town-owned properties that serve children, which would cover the Nathhorst Triangle Park. Chair Targ said the Nathhorst Triangle Park is used as a functional part of the school for pick-up and drop-off.

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Commissioner Hasko asked if the requirement for 100 percent renewable energy was a difficult hurdle for growing 12 plants. Chair Targ said it should be trivial for those that haven't opted out of the PCE.

Commissioner Hasko asked if an applicant not living on the premises would need to co-apply with the owner of the property. Town Attorney Silver said that would be the typical way to handle those types of applications.

Commissioner Taylor said the requirement to use 100 percent renewable electricity was unclear.

Commissioner Taylor asked if there was a definition of odor and how it would be monitored or measured. Town Attorney Silver said one of the concerns with this provision is that it would be difficult to enforce. She said it is somewhat subjective, but code enforcement should be able to make a reasonable person judgment. Chair Targ said it became a serious enough issue in Colorado that they reduced the larger scale operations on residential properties down to a maximum of 12 plants, except under unusual circumstances. He said there is a standard nuisance ordinance that goes along with it with regard to odor. Chair Targ said the issue of odor, as with the issues of sound, has subjective components; however, the kind of enforcement around odors in terms of qualitative tests, comes down to a reasonable person's standard. Interim Planning Director Cassidy said the language is quite common and is a standard already in the code for noise. Commissioner Taylor said the noise ordinance, however, is measured and quantitative, whereas odor is different.

Hearing no further questions from the Commissioners, Chair Targ opened the public hearing and invited public comments.

Alison Polkinhorne, 19 Valley Oak. Ms. Polkinhorne asked if the permit process described was for delivery services or only for cultivation. Town Attorney Silver said a delivery service must receive a permit from the State, but does not need a Town permit. Ms. Polkinhorne said allowing a professional, discreet, safe, highly-regulated service to continue to function in this community for the people who need it is very important to her.

Max Polkinhorne, 19 Valley Oak. Mr. Polkinhorne thanked the Commission for agreeing to have an open and ongoing conversation about the current state of cannabis-related activities in Portola Valley. He said he agrees with the Commission's proposed ordinance to ban dispensaries in Portola Valley. He does support delivery service and suggests considering retail sales with tight safety and quality regulations via delivery services which have none of the downsides enumerated by the community and significant upsides as it allows the discreet delivery of medical cannabis to members of the community who may be housebound. He cited some of the key points of the new cannabis legislation put forth by the California Bureau of Cannabis Control and the California Department of Public Health, which go live March 1, 2018. He said if Portola Valley were to accommodate retail sales of cannabis products via delivery service, he thinks this would protect young people in the community, would not attract any sort of outside unwanted traffic, but would allow the community to serve its residents by offering local access to needed medication. He said he and his family have been in contact with veterans struggling with PTSD, people who are housebound due to disease, people living with chronic diseases, and others who rely on cannabis when other forms of medication have failed them.

Anne Kopf-Sill, 30 Minoca. Ms. Kopf-Sill was supportive of the subcommittee's recommendations. She asked for clarification on part of the map regarding the buffer zone.

Margaret Wilmer, 2 Portola Green Circle. Ms. Wilmer has a 7th grader at Corte Madera School and grew up here, also attending Corte Madera and CMS. Her father still lives on Portola Road in the idyllic house she grew up in, and she'd like to keep it that way. She said she is concerned with delivery trucks and vans coming in with marijuana advertising and asked if there is any regulation around this. Town

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Attorney Silver said the current regulation does not address advertising on delivery businesses. She said it would be the delivery vehicles that are used in various cities, and there are First Amendment and constitutional issues with regard to regulating signs placed on vehicles. She noted, however, that the current delivery services use smaller unmarked cars for security reasons, so there has not been concern about it.

Kim Zamboldi, 30 Alhambra Court. Ms. Zamboldi thanked the Town with the thoughtfulness and speed in getting this ordinance prepared. She said she was particularly concerned about the Triangle as a dispensary spot and the expansion of the definition of a youth center was perfect. She asked if the next steps could be explained.

Jeff Booth, 250 Nathhorst Avenue. Mr. Booth said he has been a resident for 45 years. He said he is in general agreement. He asked if cultivation included growing, drying, trimming, extraction, etc., and if there were any restrictions in that process. Town Attorney Silver read the definition of cultivation in the proposed ordinance. Mr. Booth asked why a delivery service would be permitted, but not a retail site. He said in the discussions of setbacks in the Nathhorst Triangle that the Country Offices at the corner of Nathhorst and Alpine were not discussed. He said these offices are not in the normal flow for children. He said if a delivery service was housed there, it would seem to be an ideal spot and would certainly serve the community better than the long distance some of the services have to travel to get to Portola Valley. He said he would like to see a provision for a mandatory yearly review of the set of ordinances.

John Zussman, 5 Bear Paw. Mr. Zussman said he has lived in Portola Valley for 31 years. He said he is one of the 68 percent of the Portola Valley voters who voted in favor of Proposition 64 to allow cannabis products to be available in town and to allow cannabis businesses to operate in California. He commended the Town Council for allowing the community to consider entering the brave new world of cannabis. He commended the subcommittee for recommending that we stick our toe in the water and allow limited commercial cultivation. He said, however, this is one of those times when sticking our toe in the water isn't enough. He said this is labeled a commercial cannabis ordinance, which means commerce, which means business. He said with all the licenses, regulations, taxes, and fees that are mandated at both the State and local level, there is no way to operate a viable cannabis cultivation business with only 12 plants. He said if the Town wants to encourage and allow small-scale cannabis cultivation, then the limit of plants needs to be raised. He suggested using the same types of cultivation licenses, such as specialty cottage, as recommended by the State. He said instead of the 12-plant limitation, the Town ordinance could be aligned with the State ordinance, which allows for up to 25 plants for an outdoor license, 500 square feet for an indoor license, or 2,500 square feet for a greenhouse, also called a mixed light license. He said small scale cannabis cultivation may be the most unprofitable part of the cannabis ecosystem because the cannabis producers will compete with big egg cannabis operations. He said if the desire is for small scale cannabis cultivation to flourish, then they must be allowed to form microbusinesses. He said a microbusiness license would allow a business to grow, manufacture, distribute, and sell. He said this could encourage craft cannabis along the same level as a microbrewery, a micro-distillery, or a micro-winery, which is the only way small scale wine and beer production has been able to compete with Anheuser-Busch or Gallo, encouraging small scale operations that are craft and artisan based. He urged the Town to consider this license category to encourage small scale cannabis cultivation and businesses to prosper within Portola Valley while remaining consistent with the Town's small scale rural values and culture.

Tera Bonora, 229 Grove Drive. Ms. Bonora thanked the subcommittee for all of their work. She was supportive of their recommendations. She said she did not vote for Prop 64 and was completely against it. She said she supports personal use of cannabis. She was supportive of the Sequoias having a dispensary to help with the residents' medical issues. She said she was not supportive of commercial dispensaries around children. She was supportive of a 12-plant limit to discourage small businesses

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growing and distributing. She said that could be reviewed in 5 or 10 years and consider raising the limit at that point. She said she moved to Portola Valley for the sense of community. She said there is an obligation to protect the children by not having access to cannabis. She asked if someone renting a house in Portola Valley would be allowed to have six plants unless otherwise stated in the lease agreement. Town Attorney Silver said whether the household is occupied by a tenant or owner, up to six plants can be grown in the house. She said landlords can put a restriction in their lease agreements to prevent that, but the Town would not enforce that restriction, and it would be a private matter. Ms. Bonora said she is concerned about wind blowing marijuana seeds onto her property.

Laurie Duvall, 350 Golden Oak Drive. Ms. Duvall thanked the Planning Commission and the subcommittee. She was supportive of the recommended ordinances and was particularly pleased with the delivery possibility.

Hearing no additional public comment, Chair Targ closed the public hearing and brought it back to the Commission for discussion.

Town Manager Dennis said if the Planning Commission makes a recommendation tonight, the item will be placed on the Town Council's next agenda on February 28. He said the Council will then deliberate, finish their discussions, and an ordinance will be put in place. If the Planning Commission is unable to finish the business tonight, it will be agendaized for the next Planning Commission meeting and then go to the Council. He said staff is committed to get this ordinance in place as quickly as possible.

Vice Chair Goulden said, in general, a distribution operation of any kind was not likely something that would interest Portola Valley or fit within the Town guidelines.

Vice Chair Goulden said the subcommittee did not feel like Portola Valley wanted to be pioneers in this area, which is fraught with potential concerns. He said the fact that Colorado arrived at the limit of 12 plants after a lot of experience was influential in their decision-making.

Commissioner Gilbert asked what Colorado learned and why they reduced the maximum plants allowed to 12. Chair Targ said along with the legislation that was enacted this past year, there were a series of findings made, and asked the Town Attorney to review them.

Town Attorney Silver said Colorado previously allowed unlimited growing on residential properties for medicinal purposes. They found there were a series of problems allowing an unlimited amount resulting in very large grows. Effective January 1, 2018, Colorado passed a law that ratcheted cultivation for medicinal use to 12 plants. Town Attorney Silver reviewed the series of findings: "The extended plant count and primary caregiver provisions have created a situation in which individuals are cultivating large quantities of marijuana in residential homes. These large-scale cultivation sites in residential properties create a public safety issue and are a public nuisance. A site in a residential property can overburden the home's electrical system, resulting in excessive power use and creating a fire hazard that puts first responders at risk. A site can also cause water damage and mold in the residential property. A site in a residential property can produce a noxious smell that limits the ability of others who live in the area to enjoy the quiet of their homes. Often the site is a rental home, and the renters cause significant damage to the home by retrofitting the home to be used as a large-scale cultivation site. When residential property is used for a large-scale cultivation site, it often lowers the value of the property and thus the property value of the rest of the neighborhood. Finally, a site in a residential property can serve as a target for criminal activity, creating an untenable public safety hazard. Large-scale, multi-national crime organizations have exploited Colorado laws, rented multiple residential properties for large-scale cultivation sites, and caused an influx of human trafficking and large amounts of weapons as well as the potential for violent crimes in residential neighborhoods; Large-scale cultivation sites in residential properties have been used to divert

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marijuana out of state and to children.” Town Attorney Silver said Colorado adopted its marijuana laws a few years before California. Chair Targ asked Town Attorney Silver to include these findings and that portion of the ordinance with whatever transmittal the Planning Commission makes to the Town Council.

Commissioner Taylor asked if the Town was proposing one permit for one person, allowing 6 plants per person or 12 plants if for cultivation. Town Attorney Silver said the proposal is one permit per premise.

Chair Targ said the issue of microbusinesses were specifically raised by the head of the Narcotics Task Force for the San Mateo County Sheriff, who identified that if there is going to be an issue with organized crime, that’s where it will be located. The ad-hoc committee also considered the fact that Portola Valley would be the only jurisdiction in the vicinity that would allow a micro-enterprise, which might create an unusual concentration within this area. He said the idea of being a pioneer in certain aspects seemed appealing; however, with the admonition from the Sheriff and being a town without its own police department, it seemed too far forward from the ad hoc committee’s perspective.

Commissioner Gilbert said there appear to be substantially more restrictions for growing 12 plants outside for commercial use, in terms of wastewater, fire, and security that are not required for the 6 personal use plants. She asked if some of the restrictions required for 12 plants should also be considered for 6 plants. She said, for example, if the 6 plants are grown inside, there is no consideration regarding lighting impact, as there is for the 12 commercial plants. She said there seems to be some discontinuity between the two. Chair Targ asked Town Attorney Silver to explain the distinction between commercial restrictions required as a matter of State law versus the restrictions on personal cultivation. Town Attorney Silver said in order to grow more than six plants, a State license is required, which has a series of requirements. She said staff’s proposed ordinance includes requirements taken from the County ordinance since the same people will be enforcing the ordinance. She said there are requirements imposed by both the Town and the State. She said the policy question for the Commission is whether or not they want to replicate the State requirements or eliminate them and defer to the State to ensure that those safeguards will be put in place.

Commissioner Gilbert asked if plants are grown for personal use indoors if some protections can be put in place regarding lighting and the Fire Code. Town Attorney Silver said reasonable requirements can be put in place. Commissioner Taylor asked if there was a quantitative way of thinking about it, such as amps per plant. He said it did not seem right that 12 plants are subject to regulation, but 6 plants are not. Chair Targ said there is a desire to be consistent with State requirements as well as being consistent with County requirements. He said they did not want to create an island of regulation that puts the Town apart from the surrounding jurisdictions. They also wanted to take a gentle hand with respect to personal cultivation. He said someone trying to operate a grow operation with maximum intensity for personal cultivation in an unsafe manner seemed unlikely and was not a concern of the Fire Marshal. He said the two issues of consistency with the surrounding jurisdiction and the County and the non-objection on the part of the Fire Marshal were the two driving issues.

Vice Chair Goulden said for something small, six plants or less, the existing lighting ordinances and electrical codes were sufficient. He said although 12 plants are not much more, from the State law perspective, the regulations are different. Commissioner Taylor said someone could get the highest intensity lights as possible, which could draw a lot of power, for their six plants, and he wondered how these types of things would be normalized. He said it appeared that when it hit the commercial trigger point of 12 plants, extremely onerous were restrictions applied, but basically giving freehand to everyone else. He said it didn’t feel gradient, but very much a harsh step function.

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Commissioner Hasko asked if the lighting concern was fire safety or light pollution. Vice Chair Goulden said it could be both. He said they felt the new lighting ordinance would probably handle greenhouses. He said the Fire Marshal's biggest concern was about fire safety related to illegal operations, where people are stringing electrical cords, over-powered circuits, removing fuse boxes, etc.

Commissioner Gilbert asked if a commercial applicant lived in Portola Valley, but would not be living on the property where they would be growing, both the applicant and the person living on the property would need to be on the application. Town Attorney Silver said that is not clear in the ordinance. Commissioner Gilbert suggested it should be specified in the ordinance. She said the tenants may change on a rental property where cannabis is being grown commercially, and the Town needs to know who is responsible. Commissioner Hasko said she is more concerned about the consent piece of it because there are properties in town where people are not there day-to-day and may or may not be as aware of what's going on on their property. She said if she was an owner, she would want to be aware there had been an application to grow on her property and that it would require her consent. She asked the Town Attorney to consider the legal liability and ramifications and whether both should be liable from the Town's perspective.

Commissioner Taylor presented the scenario where a property owner gave consent, and an applicant has a renter who has committed a felony. He asked if the Town would know the renter as part of the chain, living on the same property where the cultivation is occurring. Town Attorney Silver said the ordinance could be written so that the tenant is also an applicant if that is the Commission's intent. She said the original staff recommendation was that the applicant needed to live on the property. The subcommittee's recommendation was that that may be too strict and suggested that the applicant needed to live in Portola Valley, but did not need to live on the site. Staff wanted some local person to call if a problem arose. Vice Chair Goulden said the subcommittee also discussed that it was reasonable to allow a resident who had a second property in Portola Valley to be able to use that second property for cultivation. Commissioner Gilbert said her concern was making sure the Town knew who was accountable and who was watching over the operation.

Commissioner Taylor asked what the intent was behind the requirement for an applicant to notify the Town if convicted of a crime. He asked if the Town just wanted to know if the applicant, the responsible party, had been convicted of a crime or if they also wanted to know if the applicant's tenants had been convicted of crimes. He confirmed with Town Attorney Silver that that requirement was for the applicant and not for who was in proximity to the cultivation.

Commissioner Gilbert asked regarding the 600-foot versus 1,000-foot buffer. She asked if any portion of a property was within 600 feet, would the entire property be disallowed for cultivation. Town Attorney Silver said that is how it is defined in the County and State law. Chair Targ said such a property would not be granted a State license anyway. Commissioner Gilbert asked why the County used 1,000 feet versus 600 feet. Town Attorney Silver said the County is anticipating larger-scale grows, but she does not know the genesis. Commissioner Gilbert asked if the subcommittee had discussed 600 versus 1,000 feet. Vice Chair Goulden said it was discussed as part of the youth centers, and it seemed like the 600 feet would be adequate if the definition of a youth center was expanded. He said they weren't adamantly wedded to 600 or 1,000 feet, and using 1,000 feet would affect more properties, but would not likely affect any public areas.

Commissioner Taylor asked if there was a definition of a youth-oriented area. Town Attorney Silver read Definition Y under Section 18.39.020. "Youth Center shall have the same meaning as defined by California Health and Safety Code Section 11353.1 and shall also include publicly owned facilities and properties that support activities for youth and children." She said that the added language captured Triangle Park. Commissioner Taylor asked why they couldn't just call out Nathhorst specifically. He said, for example, there is a small piece of Town-owned property at the top of Old La Honda that, if

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children started playing there, could be considered Town-owned property that is a youth facility, and the 600 feet would then apply.

Commissioner Taylor said R-1 should not be excluded if they met the requirements. He asked why not use the existing prescription rather than the Zoning designation. Town Attorney Silver said the thought was there would be very few R-1 properties that would qualify, being smaller in size and not appropriate to support cultivation. She said it was felt it would be more transparent to say R-1 properties are going to be carved out of the ordinance rather than setting up a false expectation. Commissioner Gilbert asked what criteria R-1 properties would not meet. Town Attorney Silver said the buffer and size of the R-1 lots, with the proximity to neighbors being more intrusive. Commissioner Gilbert asked if the visibility issue applied to plants in the ground or also included planting in a greenhouse. Town Attorney Silver said the subcommittee wanted to encourage outdoor cultivation as opposed to greenhouse grows, especially in an R-1 neighborhood where the sudden construction of a big greenhouse would have more impact. Chair Targ said from the experience in Colorado and the observations of the Sheriff's Office, concentrating marijuana plants in a confined area with a limited number of vents tends to create more odor issues than if you have more dispersed open air. Greenhouses must also deal with light spill and impervious surface issues.

Chair Targ asked Commissioner Taylor, who lives in a higher density area, to share his thoughts about commercial cultivation in denser areas. Commissioner Taylor said the existing criteria, such as light spill and impervious surfaces, must and should be applied and should be made clear, and those restrictions would apply across the board, rather than arbitrarily restricting certain zoning designations. He agrees that a lot of the R-1 properties will not qualify, but does not think the zoning should be one of the restrictions. Chair Targ suggested the Commissioners think about if there should be a requirement regarding appropriate lot dimension, size, and areal extent. Commissioner Taylor asked, for example, if someone put up an allowable garden shed equivalent to a greenhouse, why they wouldn't be allowed to grow. In response to Chair Targ's question, Commissioner Taylor said he would be supportive of using the same sort of structure model in addition to the other requirements such as for odor, setbacks, height requirements, etc., and removing the zoning restriction entirely.

In response to Commissioner Gilbert's question, Interim Planning Director Cassidy said a homeowner's association could supersede the ordinance by being more restrictive.

Commissioner Taylor said he understands the reasons for keeping cannabis out of sight of the public through public nuisance, such as via trail easements, etc. He asked regarding the goal of keeping the cannabis out of sight of neighbors. He also asked regarding visibility versus distance. He said he understands the issue of not wanting children to walk by a property and see a grove of marijuana plants. He said, however, there are places he could stand and see a marijuana plant from a great distance. Chair Targ said there were people who objected to seeing turf from the top of Windy Hill and the same may be true for marijuana plants that could be discerned from a couple of miles away. Commissioner Taylor said he may be more comfortable with some kind of distance measure because it did not seem fair to object to something someone may be able to see from half a mile away. He did not think it is reasonable to make sure no one ever sees a marijuana plant, but rely more on the public nuisance factor of someone walking by a fence, seeing marijuana plants, and climbing over the fence to get to them.

Commissioner Hasko pointed out that the plants grow up to 10 feet tall. She said the trail system is as extensive as the road system and fencing is discouraged. She said there will be a lot of properties that children and visitors walk by. She said a distance requirement will not be enough. She said 10-foot plants will be visible, and people will know who grows. She understands that topography makes visibility difficult, but if outdoor cultivation is going to be allowed, she is concerned about the trail issue.

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She said there were comments about going over fences to get to the plants, but Portola Valley is not supposed to be constructing incentives to build fences.

Commissioner Taylor said the fencing ordinance limits fences to 6 feet, but marijuana plants grow to 10 feet so additional plant screening would be necessary. Commissioner Gilbert said the ASCC has expressed concern about hedging along roads and the desire to open up the views. Chair Targ said the issue becomes magnified with more plants. He said the easier thing to do would be to not allow cultivation whatsoever and to obviate the whole discussion. He said it's also important to recall they are talking about five permits and there is a question of whether that means five permits per year cumulative or five permits total, and what the level of tolerance is for fencing, visibility, screening, and size. Commissioner Taylor said some of the tension is because they'd like to encourage outdoor growing rather than indoor growing. Commissioner Taylor asked if a 12-foot tall greenhouse would be allowed. Interim Planning Director Cassidy said they would be treated as any other structure. Commissioner Taylor said he would be supportive of the standard requirements for an auxiliary structure to be used for commercial purpose. Interim Planning Director Cassidy said they look at ceiling heights, how finished the structure is, if there's HVAC, the intent of the structure, etc., to determine if it is also considered additional floor area.

Commissioner Taylor asked if there were restrictions regarding business hours. Town Attorney Silver said that could be incorporated into the ordinance.

Commissioner Gilbert referred to Section 18.39.070.B, Commercial Cannabis Permit Requirement. She asked for clarification regarding "The proposed activity is no more objectionable than the listed activities ...". Town Attorney Silver said that appeared to be a drafting error and should be no more objectionable than the types of conditionally permitted uses that are permitted in that particular zone. Commissioner Gilbert said a normal CUP would list what can be done on the property, but this kind of property will not have an existing CUP. Chair Targ said it would still need to be consistent with the residential neighborhood and consistent with the other uses permitted by right within the zone. Interim Planning Director Cassidy said uses are listed various ways – permitted by right, which is very limited; accessory uses permitted; conditionally permitted uses; and others. She said if the desire is to specifically reference what that is, it should be clear if it's all other types of permitted uses or accessory, utility, conditionally permitted, or if it's one only.

Commissioner Gilbert said it appeared the ordinance used "permittee" when referencing both personal use and commercial cultivation; however, only commercial cultivation required a permit. Town Attorney Silver said she will correct that.

Commissioner Gilbert referred to 13.39.180.B, which referred to a penalty of three times the amount of permit fee. She asked what the permit fee would be. Town Attorney Silver said they have not yet determined the amount of the permit fee. Commissioner Gilbert's concern was that if the permit fee was low, the 3x penalty would not be a deterrent. Chair Targ said the issue was abatement or closing of the facility.

In response to Commissioner Hasko's question, Chair Targ said a person could have both 6 personal plants and 12 plants for commercial use.

Commissioner Taylor said the ordinance seemed onerous for a prospective commercial grower permittee. He said, for example, there is a requirement to have trash picked up within seven days. He asked if the Town could revoke a permit because the trash was picked up a day late due to a holiday. Town Attorney Silver said there would not be code enforcement activity in that situation. She said the intent behind the provision is that the Town doesn't want cannabis-related waste sitting in front of

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somebody's property for long periods of time. Commissioner Taylor said the grower's cannabis related waste should be kept out of sight until pickup day.

Commissioner Taylor said another example of harshness was allowing only 30 days to rectify an incomplete application or the permit would be considered abandoned. He said there are only five permits being allowed, and he would like to assure an applicant that the Town's goal is to work with them to get their permit granted within the restrictions. He said the ordinance reads more harshly. Interim Planning Director Cassidy said most of the code is not written to specifically call out good faith effort, and there is an understanding that people are generally doing their best to follow the code. She said since there is not a patrolling code enforcement officer, and the Town does not take an active role in looking for violations, when violations are reported, the Town's general goal is to assume that good faith effort and the first contact is usually a courtesy notice and not the initiation of a notice of violation, which basically starts the clock for the person to come into compliance. She said there is generally a phone call, an email, or some informal contact letting the person know a complaint has been received and the Town would like to see it brought into conformance. She said the majority of complaints are addressed before a first notice of violation goes out. She said this is a more sensitive issue, and there will be more eyes on cultivation; however, she would assume the Town would continue their process with the assumption that when a complaint is made, someone will probably jump to address it, especially because it is a sensitive issue. Commissioner Taylor asked if a permittee has recourse if the Town tells them they have abandoned their permit and need to start over. He said there should be some mention of recourse options for the permittee. Chair Targ said staff is reasonable, and the accessibility to Town leadership and staff's treatment are relief valves that have worked effectively. He would recommend to leave things tighter and, if they are enforced in an unreasonable matter, they can be reviewed and titrated down rather than try to hit directly on the nose and try to define best efforts. He suggested letting the enforcement process play itself out through the discretion the Town has effectively exercised on a day-to-day basis. Commissioner Taylor agreed that they should not get into trying to define good faith and said he would like to see a relief valve offered in the ordinance. Chair Targ said it was not necessary because the Town Manager was always available, and if he was not responsive, people could reach out to the Councilmembers. He said he did not want to end up being the marijuana board of appeals. Town Attorney Silver said before a permit could be revoked or suspended, there is an appeal process. Commissioner Hasko said 18.39.030.A indicates permitting "cultivation of up to 12 cannabis plants on any single property in the R-E or M-R zoning districts." She said "for commercial activity" needs to be added there. Town Attorney Silver said she will correct that.

Commissioner Taylor asked if five permits per year was five new per year or five total growers per year and if there is a cap. Commissioner Gilbert said if she had a permit, she would want to know that she would have preference to renew the following year in order to be running a business. She said the yearly review could be a good way to start it because the Town will learn a lot about the process, the restrictions, etc. Chair Targ said they talked about a five-year sunset. He said the understanding of issues of enforcement and tolerance in Town will likely change over time, as well as the effectiveness of over- or under-regulation that may be embodied here. He said one year seems too short to allow for adequate ventilation or change in morays, and five years may be too long. In response to Commissioner Taylor's question, Chair Targ said he was talking about a sunset where something new would happen after a mandatory review; an action forcing a requirement to come to an end and then reconsider what has been done. Commissioner Gilbert said she was talking more of just a review at one year, particularly in terms of whether or not the restrictions are too onerous and need to be rephrased, or if a lot of neighbor complaints about a particular issue are received. Commissioner Hasko said for a cultivation permit, the applicant would need more than a year visibility to invest in it and agreed sunset may be the right mechanism to force renewal or revisitation. She said she was supportive of revisiting it, and optimizing will likely be needed, but the question is when there will be enough data. The Commission agreed with a review one year after the first permit is issued, followed by recommendations to the Town Council.

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Commissioner Taylor asked if the information collected by the Town for the cannabis permits would be available to the DEA. Interim Planning Director Cassidy said it is a matter of public record, and all of the information on the application must be released.

Commissioner Taylor said the ordinance states a grower can be inspected at any time. He said he understood it was not likely the Town would come by at 2:00 a.m. to inspect a property, but suggested random inspection be limited to business hours. Interim Planning Director Cassidy said there is a scheduled inspection done by Town staff or an inspection on a complaint; however, people can call the police at any time to complain about noise, a party, large lights, etc., which would be answered immediately. She said this would carry forward and cover concerns about these businesses as well.

Commissioner Taylor said the Track and Trace had to be registered with the State and asked if the Town had access to that data. Town Attorney Silver said this is a new area of regulation, and it is assumed the Town can have access to those records, but it is not known for sure at this point. She said she is not sure the Track and Trace program is up and running yet.

With no further discussion items from the Commissioners, Chair Targ brought the discussion back to the Outstanding Issues for Discussion as listed in the staff report.

- Personal outdoor cultivation: Should the ordinance establish a numeric buffer from the adjacent properties or just contain a qualitative buffer (i.e., not be visible from public locations). (Ordinance Section 18.39.040 B.)

Commissioner Taylor said his assumption was that this was dealing with the attractive nuisance issue, not having easily accessible marijuana plants, rather than “I don’t like the look of marijuana plants.” Commissioner Taylor suggested restrictions about visibility along ordinary public view such as public trails, public street views, public parks, etc. Commissioner Gilbert agreed with a qualitative standard versus a specific distance because the distance would be different for different properties. Commissioner Hasko said although it might be known that marijuana is being grown on a property even though it’s screened, but she would prefer there be some effort to screen and not just rely on distance. Vice Chair Goulden said a Conditional Use Permit gives the Commission the leeway to make a decision, especially in the early permits, and he would prefer the Commission have the ability to use discretion while this is being figured out, using ordinary public view versus specific numeric buffers.

Chair Targ suggested striking the issues pertaining to screening, distance, and neighbor view and just use ordinary public view, setbacks, and proximity to youth centers.

Chair Targ said he was interested in concluding this this evening and asked staff if they had enough information and direction on the adjustments requested to the ordinance. Commissioner Gilbert said she would not likely be comfortable voting on this without seeing all the changes in writing. In response to Commissioner Taylor’s question, Interim Planning Director Cassidy said no one had applied to grow, but there has been interest expressed in a general sense for distribution. Town Attorney Silver said, with respect to timing, that Town Manager Dennis indicated the February 28 date is not firm, and there may not be enough time to notice it in the newspaper; it was more likely to be put out in March.!

In response to Town Attorney Silver’s question, Chair Targ said a neighbor view is private and not an ordinary public view, from a publicly accessible spot. Commissioner Taylor cited examples of a public road or trail, but not standing atop Windy Hill looking down on all of Portola Valley.

- Should permittees be allowed to possess more than one permit (Ordinance Section 18.39.040 C.)

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Commissioner Gilbert said since the limit was five total, one person should not be allowed to have more than one permit, at least initially. Commissioner Taylor agreed. He said if there is an initial rush of 15 applicants and only five permits are issued, then it may be reconsidered in a year. Vice Chair Goulden said part of the consideration was the amount of staff time this takes. He said they don't normally do five Conditional Use Permits a year, so staff could be overloaded if the number of permits allowed is too generous.

The Commission agreed on one permit per permittee.

- Should the "sensitive receptor" buffer be 600 feet (State law) or 1,000 feet (County buffer for larger parcels). (Ordinance Section 18.39.140 D.)

In response to Commissioner Gilbert's question, Town Attorney Silver said the 600-foot buffer does not apply to personal outdoor cultivation under State law, but the Town can apply a local regulation.

The Commission was in general agreement with a sensitive receptor buffer of 600 feet. Commissioner Hasko said it seemed odd to be able to grow personal outdoor plants near the schools and her impression of the commentary was the assumption that 600 feet was more broadly applicable to outdoor availability. She said it wouldn't reflect what the community may be comfortable with and being out of sight would definitely help. Chair Targ suggested coming up with bracketed language to be reviewed at the upcoming meeting.

- How many permits should be permitted on an annual basis. If five new permits are granted, what about renewals? Should the original five incumbents receive preference or should there be a rotation? (Ordinance Section 18.39.140 M.)

Commissioner Taylor proposed five permits the first year, five additional permits the second year, with a cap of 10 total. He said in the annual review, if there is a lot of interest, the Commission can rethink their position, but if there is none, then 10 could cover it forever. The Commission agreed that rather than a lottery system, the applications will be considered on a first-in-time basis. Interim Planning Director Cassidy asked if there should be a waiting list if there are more than five applications, or if those additional applications would automatically be in the second group to be considered in the second year. The Commission agreed with renewals of existing permittees first, with a lottery at the beginning of the second year for new applications. The total cap will be 10 unless reconsidered after review.

- Are the additional requirements relating to runoff, storm water, wastewater discharge, energy use and the like necessary or are they too onerous for just 12 plants? (Ordinance Section 18.39.140 Q-Y.)

The Commission agreed that the existing requirements should stay in place, and they will be better able to assess their necessity at the time of the first annual review. Commissioner Gilbert said she was still bothered by the fact there is such a big difference in the regulations between 6 and 12 plants, but was supportive of tabling that discussion until after the one-year review. Commissioner Taylor suggested keeping track of comments indicating the requirements are too onerous for prospective growers.

- Since record retention and Track and Trace Program are both required by the State, is it redundant for Town to also require. (Ordinance Section 18.39.150-18.39.160.)

Commissioner Taylor said since the State requires those records, it is redundant, but he wants to make sure the Town has access to that information. Commissioner Gilbert said it doesn't hurt to be

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redundant because applicants would need to fulfill that requirement for the State anyway and it would just emphasize the importance of it.

- Should commercial cannabis Permittees be required to live on the property for cultivation or just in Portola Valley? (Ordinance Section 18.39.140 B.)

Commissioner Gilbert said she was leaning toward not requiring an owner to live on the property, but was concerned there may be a lot of other issues not fully considered, such as letting a friend grow and things getting out of control because someone is not watching what's going on. Commissioner Hasko said if somebody unknown to the owner applied for a permit to grow on the owner's property, there are property rights that could be asserted in addition to possible redress for doing things inappropriately through the Town's permitting process, but she doesn't feel she knows exactly what those boundaries are. She said it needs to be clear who is legally responsible for noncompliance – the owner or the tenant. Chair Targ suggested a unity in ownership between the applicant and the owner of the property, but they don't necessarily have to live on the property. Commissioner Taylor suggested requiring written owner consent with the permittee being responsible.

Town Attorney Silver said if there was an issue, most of their code enforcement activity is directed at the property, such as liens or violations. She said it is difficult to envision a situation where the property owner is not liable for the activity on the property. Interim Planning Director Cassidy said when an ASCC application comes in for an addition, the applicant can be anyone – the person living there, the owner, the architect – and anyone can sign a Memorandum of Understanding saying they agree to pay, but the property owner has to agree because in the end it does come back to the property owner as ultimately responsible for what occurs. It is the Town's responsibility to ensure that the property owner knows about and agrees to the proposal. She said when the Town does a site review, they contact the owner as listed on the application, and if there is a renter, the owner will contact the renter and get permission from them as well.

- What is the appropriate setback limits for public easements, trails and properties which the Town possesses a legal interest? (Ordinance Section 18.39.140)

The Commission agreed this was addressed with ordinary public view.

Commissioner Taylor asked if a trail could ever be considered a youth facility. Commissioner Hasko said there are certain trails designed as Safe Paths to School that get special attention for maintenance. Town Attorney Silver said it would affect a commercial grower within the 600-foot buffer unless the previous suggestion of being explicit regarding the youth facilities is adopted. Interim Planning Director Cassidy said they could map it, applying the 600-foot buffer to the Safe Routes to School and see where it lands.

Chair Targ said the Town possessing a legal interest does not seem like the appropriate item that gets to the issue of the excess property at the top of Old La Honda and the 35 miscellaneous pieces of property the Town owns. He suggested an explicit list be created to which they could add the Safe Routes to School.

- Should the ordinance have a sunset provision?

The Commission agreed a sunset provision was not necessary. The Commission agreed on a review at one year after the ordinance passes with recommendations to Council, and then yearly for five years.

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Chair Targ asked if there should be designated business hours. Interim Planning Director Cassidy said there may be such designations for home occupations, but she would need to look into it further. Town Attorney Silver said that is typically addressed in the Conditional Use Permit process.

Chair Targ said an issue was raised about normalizing the different power requirements between personal cultivation and commercial cultivation and recommended waiting to evaluate in a year.

The Commission supported developing a list of youth-oriented facilities and Safe Routes to School and eliminating the zoning requirements generally.

The Commission agreed that neighbor views, distance views, and screening have been dealt with through ordinary public view.

The Commission agreed to add “permissible uses” to Section 18.39.070.B.2 for clarity.

The Commission agreed that in Section 18.39.030.A, the 12 plants be identified as commercial use and striking the R-E and M-R zoning.

The Commission agreed to add to the ordinance the requirement for a review in one year after the ordinance is adopted with recommendations provided to Council for action.

The Commission agreed on 12 plants for commercial growing; 5 permits per year with a maximum of 10, and a process for distributing the permits; a prohibition on manufacturing; a prohibition on microbusinesses; and a prohibition on distribution except for delivery service which is permitted unregulated, including with respect to signage.

The Commission thanked the ad hoc committee for all of their work and time spent on this issue.

Vice Chair Goulden moved to continue this item to the next agenda meeting. Seconded by Commissioner Taylor; the motion carried 5-0.

NEW BUSINESS [10:42 p.m.]

Chair Targ called for a brief recess.

2. Review of Modification to the Town’s Ground Movement Potential Map, File # PLN GMM 3-2017, 380 Escobar Road, Freccia/Giblin

Interim Planning Director Cassidy presented the background of the proposal and staff’s recommendation to adopt the resolution approving the requested modifications to a portion of the Town’s Ground Movement Potential Map, as detailed in the staff report.

Chair Targ invited comment by the applicant. Hearing none, he invited questions from the Commission.

Commissioner Gilbert said the report noted the proposal is to change the designation on the adjacent property. Interim Planning Director Cassidy said the report noted that their findings could be reflected in a change to the adjacent property, but there is no current proposal to do so.

Commissioner Gilbert asked if the structures on the adjacent property were in the Md zone that is potentially changing to Ms. Interim Planning Director Cassidy said the applicant may have anecdotal information, but it has not been mapped.

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Commissioner Gilbert asked if the owner of the adjacent property was noticed. Interim Planning Director Cassidy said a 300-foot buffer was noticed.

Hearing no additional questions, Chair Targ invited questions from the public. Hearing none, Chair Targ closed the public hearing and brought the issue back to the Commission for discussion.

Hearing none, Chair Targ called for a motion.

Vice Chair Goulden moved to approve Resolution 2018-3, A Resolution of the Planning Commission of The Town of Portola Valley Approving Modifications to The Ground Movement Potential Map. Seconded by Commissioner Gilbert; the motion carried 5-0.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

3. News Digest – Planning Issues of the Day

Interim Planning Director Cassidy introduced the News Digest and two articles included in the packet. She invited feedback from the Commission such as requests for additional information. She invited the Commission to suggest articles they'd like to see in future packets.

Interim Planning Director Cassidy announced that the San Mateo County Bicycle and Pedestrian Advisory Committee has one elected and two public seats open if anyone is interested. She said the deadline for public members to apply is February 21 and February 23 elected members.

APPROVAL OF MINUTES: January 17, 2018.

4. Planning Commission Meeting of January 17, 2018

Commissioner Taylor moved to approve the minutes of the January 17, 2018, meeting, as amended. Seconded by Commissioner Gilbert, the motion carried 5-0.

ADJOURNMENT [11:00 p.m.]