



## Staff Report

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### Yountville Town Council Staff Report

**DATE:** May 19, 2020  
**TO:** Mayor and Town Council  
**FROM:** Steven R. Rogers, Town Manager

#### **TITLE**

Discussion and possible direction regarding Town Council placing two ballot measures on the November 2020 election regarding cannabis retail businesses.

#### **DISCUSSION/BACKGROUND**

At its meeting on May 5, 2020, the Town Council provided further direction to Town Staff on this item. Based on this direction, Town Staff has removed the requirement for secondary retail for cannabis retail businesses and made technical, conforming changes throughout. Topics for discussion by the Town Council at this meeting include: the possibility of including a cannabis overlay zone in one of the ballot measures, whether to remove or expand upon the requirement for “substantial community benefit” by cannabis retail businesses, and any other direction from the Town Council regarding the ballot measures. Below is a discussion of the process and ballot measures generally.

The Town Council has been discussing and evaluating its current cannabis regulatory scheme since passage of Proposition 64. The Town initially banned all cannabis related activities except for those that were allowed by state law. Subsequently, the Town amended that ordinance to allow for delivery of cannabis within the Town limits. At this time, the Town allows up to 6 plants indoor as required by the personal grow allowance and for delivery of cannabis from a state approved retailer. The Town does not allow cultivation, outdoor growing, lab operations or testing, or permit a cannabis retail business.

The Town Council had previously indicated that it would continue to monitor the ever changing and evolving state regulations regarding cannabis. The Council initially appointed a Cannabis Ad Hoc Committee comprised of Vice Mayor Dorman and Council Member Durham to serve on the committee to research and discuss possible changes in the Town’s regulatory framework. The Ad Hoc Committee transitioned to a standing committee which is now comprised of Mayor Dunbar and Vice Mayor Dorman.

The Cannabis Standing Committee further researched the issue and presented the full Town Council with a proposed draft of a possible cannabis regulatory framework for discussion and review purposes. The Town Council has engaged in those discussions. During those discussions there has been vigorous and engaging public feedback from those opposed to and those in support of the possibility of the Town allowing a cannabis retail business. As a part of the community discussion, the question was presented whether it might be appropriate for the Town Council to put consideration of allowing a cannabis retail business ordinance on the November 2020 ballot to let the community decide if this is appropriate or not.

The Cannabis Standing Committee met on Thursday, February 13, 2020 to discuss consideration of the ballot measure idea. There were a number of residents who spoke in favor of placing this item before the voters. The Standing Cannabis Committee has recommended to the Town Council that the Town Council place a cannabis retail business ordinance on the November 2020 ballot. As will be described below, the first ballot measure creates a regulatory and land use regime for cannabis retail businesses. The second ballot measure establishes a business license tax of no more than three percent of cannabis retail businesses' gross receipts. The two ballot measures may also be combined into a single ballot measure if the Town Council chooses. The procedures for doing so will be discussed by staff during the presentation.

If both ballot measures are placed on the ballot, each will be voted on by registered voters separately in the November 3, 2020 election. If approved by a majority vote (50% + 1) of the electorate, the ordinances will take effect ten days after the vote's certification. As written, the first ballot measure (regulatory and land use) will take effect if passed by a majority of voters, regardless of whether the second ballot measure (business license tax) is approved. However, the second ballot measure regarding the tax will only take effect upon voter approval if the first ballot measure is also approved. Therefore, there will be no tax on cannabis retail businesses if cannabis retail businesses are not permitted to operate within the Town.

**REGULATORY AND LAND USE REGIME.** The first ballot measure updates Chapter 9.30 of the Yountville Municipal Code, which currently prohibits all cannabis activity within the Town's jurisdiction with limited exceptions for personal use cultivation and mobile delivery. The ballot measure first establishes a commercial cannabis permit which entitles holders to operate a cannabis retail business pursuant to regulations in Chapter 9.30. The ballot measure specifies the application process for a commercial cannabis permit. Applicants must first submit an application during an application period designated by resolution of the Town Council. This application must include specified information including, but not limited to:

1. A non-refundable application fee, as determined by resolution of the Town Council;
2. Certain information about the applicants, including other cannabis businesses they operate;
3. Information about the proposed site for the cannabis retail business, including a floor and site plan and consent of the property owner if the space is rented;
4. An odor control plan;
5. Business operations information, including: (a) business plans; (b) community relations plans; (c) community benefits plans; (d) neighborhood responsibility plan; (e) inventory control procedures; (f) tax compliance; and (g) insurance.
6. A security plan; and
7. Indemnification.

The ballot measure provides reasons that an application will be immediately disqualified including if it is not timely submitted, it is submitted incomplete, or if it is within 300 feet of certain sensitive receptors within the Town (community spaces, schools, etc.).

The ballot measure provides that the Town Manager will rank applications based on the following criteria: (a) community benefit; (b) equity and labor; (c) messaging; (d) control of business location; and (e) financial investment. The Town Council is permitted to more clearly define these criteria before Town Manager reviews and ranks applications, including by creation of a points-based ranking system. Once ranked by the Town Manager, the Town Council may issue one commercial cannabis permit to the highest ranked applicant. However, the Town Council may choose not to offer a commercial cannabis permit to an applicant if it makes any of the following findings:

1. The highest ranked application(s) does not provide substantial benefits to Town residents;
2. The highest ranked application(s) will be detrimental to other uses in the surrounding area;
3. The highest ranked application(s) is incompatible with the character of the location the cannabis retail business is proposed in; or

4. The highest ranked application(s) may directly or indirectly create or exacerbate nuisance conditions, as defined by Yountville Municipal Code Chapter 9.32.

Once granted, a commercial cannabis permit is effective for 12 months. Commercial cannabis permits cannot be transferred to new owners or new retail locations, except as specified in Section 9.30.150(B). The ballot measure provides that applications can be renewed by renewal application submitted at least 60 days before the permit expires. The Town Manager is charged with granting or denying renewal applications. The Town Manager must make certain findings before approving a renewal permit; the applicant has the burden of satisfying those findings by substantial evidence. The ballot measure also specifies reasons that a renewal application must and may be denied by the Town Manager.

Commercial cannabis permits can be suspended or revoked if they meet one or more of the circumstances upon which a commercial cannabis permit application or renewal application can or must be denied. The Town Manager has discretion to choose the appropriate administrative action based on the severity and regularity of the violations. The ballot measure also establishes which Town decisions are appealable and provides that such appeals must occur pursuant to the procedures set forth in Yountville Municipal Code section 1.30.010.

The ballot measure also establishes operating requirements for cannabis retail businesses including, but not limited to:

1. Cannabis and cannabis products cannot be visible from the exterior of the building;
2. Persons under 21 years of age shall not be allowed on the premises, and shall not be allowed to purchase cannabis or cannabis products;
3. Cannabis retail businesses must use odor control systems;
4. Cannabis retail businesses must maintain a comprehensive general liability policy;
5. Conditions placed on the conditional use permit issued for the property (described below) are also conditions of the commercial cannabis permit; and
6. Cannabis retail businesses must implement specified security measures.

Both the Town Council and the Town Manager may adopt additional regulations to be placed on cannabis retail businesses. All regulations established must be published on the Town's website and, after adoption, will have the same force and effect of law. The Town Council may adopt fees as necessary to implement Chapter 9.30, including an application fee representative of the Town's costs in processing the applications. All violations of the Chapter are subject to administrative enforcement and are deemed nuisances under the Yountville Municipal Code. Each responsible party as to a cannabis retail business can be held jointly and severally liable for all violations.

The second component of the ballot measure is a use permit requirement, as described in Yountville Municipal Code Chapter 17.62. That Chapter establishes the CAN, Cannabis overlay zone and requires that all cannabis retail businesses are only permitted in that zone subject to a use permit. The ballot measure places the following conditions on use permits for cannabis retail businesses:

1. Obtain and maintain a commercial cannabis permit under Chapter 9.30 and an appropriate state license;
2. Operate in substantial compliance with the application materials submitted pursuant to Section 9.30.050 of the Yountville Municipal Code;
3. Cannabis retail businesses cannot be located on a property directly abutting a residential zoning district, except that a cannabis retail business may be located on a property directly abutting the rear yard of a private residence;
4. Cannabis retail businesses may not be located within 300 feet of certain sensitive receptors (community spaces, schools, etc.);
5. Cannabis retail businesses must pay all applicable current and future state and local taxes, fees and

penalties;

6. Alcoholic beverages cannot be possessed, stored, sold, distributed, or consumed on the premises. A license for sale of alcoholic beverages cannot be held for that premises, nor can a business that sells alcoholic beverages operate in the same space or adjacent to a cannabis retail business;
7. No cannabis, cannabis products, or cannabis accessories may be displayed in windows or visible from the public right-of-way or from places accessible to the general public;
8. Minors and persons under the age of 21 cannot be allowed on the premises, even if accompanied by a parent or guardian;
9. Cannabis and cannabis products cannot be stored outdoors; and
10. Any other development or operational standards as the Town Council deems necessary or appropriate.

The Town Council, therefore, may establish other use permit conditions for a cannabis retail business. However, such permit conditions may not conflict with operational requirements applicable pursuant to other provisions of the Yountville Municipal Code.

Use permits are granted after a public hearing and only after the Town Council makes the following findings, in addition to those required for all use permits by Yountville Municipal Code section 17.156.020: (a) the proposed use provides benefits to residents; (b) the proposed use will not be environmentally detrimental to existing or potential commercial and residential uses in the surrounding area; (c) the street network is suitable and adequate to carry projected traffic that is generated by the proposed use; and (d) the design of the structure or structures is compatible with the character of the Town.

**BUSINESS LICENSE TAX.** The second ballot measure establishes a business license tax applicable to cannabis retail businesses. The business license tax is a general tax imposed on every cannabis retail business at a rate to be established by resolution of Town Council. As this is a general tax, proceeds from the tax may be used by the Town for any lawful purpose, including but not limited to, general Town services, public safety, road and transportation purposes, and parks and recreation. The tax is imposed on the gross receipts of cannabis retail businesses shall not exceed three percent of the businesses' gross receipts. The Town Council may adjust the tax from time to time up to the maximum three percent approved by voters. The tax will be implemented pursuant to the Town's existing procedures for collection and enforcement of business license taxes under Yountville Municipal Code Chapter 5.04.

**ALTERNATIVE.** The Town Council could combine the two ballot measures into a single ballot measure. The ballot title for any single measure may not exceed seventy five words. The more information contained in the ballot measure, the more difficult it may be to include an accurate description in seventy five words.

#### OTHER CONSIDERATIONS.

1. Whether to further revise the draft language in either ballot measure;
2. Whether the first ballot measure (or a combined ballot measure) should include creation of the cannabis overlay zone - currently, it does not; and
3. Whether the land use regulations (use permit and zoning restrictions) should be removed and adopted by the Town Council after the ballot measure is approved.

#### **ENVIRONMENTAL REVIEW**

Exempt per California Environmental Act (CEQA) Guideline, Section 15061(b)(3)

#### **FISCAL IMPACT**

Is there a Fiscal Impact? Yes

Is it Currently Budgeted? Yes

Where is it Budgeted? Town Clerk's Election Budget

Is it Mandatory or Discretionary? Discretionary

Is there a Staff Resource Impact? Yes

### **STRATEGIC PLAN GOAL**

Is item Identified in Strategic Plan? Indirectly

If yes, Identify Strategic Goal and Objective. **Engaged Residents:** The Town embraces our residents' commitment to community as seen through volunteerism, civic engagement, and public participation that enhances the quality of life in Yountville.

Briefly Explain Relationship to Strategic Plan Goal and Objective. Town Council is being responsive to request from a group of citizens that believe an issue of this significance should be determined by the residents/voters of the community.

### **ALTERNATIVES**

Town Council could decide to approve a Cannabis Retail Business Ordinance at a future meeting without placing item on the November 2020 ballot.

Town Council could decide to consolidate the two proposed measures into one, or to proceed with only one of the two measures.

Town Council could take no action on this item.

### **RECOMMENDATION**

Receive staff report and direct questions to staff.

Receive public comment.

Conduct Council discussion on proposed Ordinances.

This is a Town Council policy determination as to whether the issue is appropriate to place on the November 2020 ballot, and whether to place this issue on the ballot as one or two ballot measures. Staff notes that doing so provides clarity as to the outcome and next action steps if the initiative were to either pass or fail.