



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Ordinance Text Amendment – OTA 2021-01 Permitting Cannabis Businesses in the City of Madera Item # 1 – May 24, 2021

PROPOSAL: Consideration of adoption of a resolution recommending to the City Council adoption of an ordinance amending Sections 10-3.802, 10-3.902, 10-3.1002, and 10-3.11.505 to the Madera Municipal Code.

APPLICANT:	City of Madera	OWNER:	N/A
SITE ADDRESS:	N/A	APN:	N/A
APPLICATIONS:	OTA 2021-01	CEQA:	Exempt per Division 13 of the Public Resources Code if ordinance adopted before July 1, 2021.

LOCATION: Citywide

STREET ACCESS: N/A

PROJECT SIZE: N/A

GENERAL PLAN DESIGNATION: N/A

ZONING DISTRICT: N/A

SITE CHARACTERISTICS: N/A

ENVIRONMENTAL REVIEW: Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

BACKGROUND: On June 27, 2016, the State enacted the Medical Cannabis Regulatory Safety Act (“MCRSA”) to protect residents’ use of medical cannabis and to establish regulations for personal and commercial medical cannabis activity. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”) to regulate personal and commercial non-medical marijuana activity. On January 1, 2018 the State began issuing temporary commercial licenses for medicinal and non-medicinal cannabis. Many California cities and counties are now implementing local cannabis regulations.

SUMMARY: Various changes to Title X: Planning and Zoning of the City Municipal Code of Ordinances are being proposed regarding the siting of the cultivation, processing, manufacturing, testing, sale and distribution of cannabis and cannabis products in the City. The City of Madera Municipal Code, specifically Chapter 3: Zoning, currently prohibits the cultivation, processing, manufacturing, testing, sale, delivery and distribution of cannabis and cannabis products in the City. Public workshops on developing a cannabis regulatory ordinance to change this position have been presented to City Council on January 6, January 20, and on April 21, 2021. City staff has been working in conjunction with an outside consultant to develop a cannabis regulatory ordinance for consideration by City Council.

The purpose and intent of the cannabis regulatory ordinance is to provide access to adult-use cannabis for persons aged 21 and over as authorized AUMA (“Proposition 64”) approved by the California Voters in 2016, while imposing sensible regulations on the use of land to protect the City’s residents, neighborhoods, and businesses from disproportionately negative impacts. It is the purpose and intent of the proposed Municipal Code amendments herein in conjunction with the proposed cannabis regulatory ordinance to regulate the commercial cultivation, processing, manufacturing, testing, sale, delivery and distribution of cannabis and cannabis products in a responsible manner to protect the health, safety and welfare of the residents of the City and to enforce rules and regulations consistent with state law.

City Council, at the request of staff, initiated a zoning text amendment on May 12, 2021 associated with the proposed cannabis ordinance as the implementation of the ordinances would require amendment to the Zoning Code for consistency.

APPLICABLE CODES AND PROCEDURES: City of Madera Zoning Code

PRIOR ACTION: City Council initiation of the zoning text amendment on May 12, 2021.

ANALYSIS

Presently, Title X: Planning and Zoning of the City Municipal Code does not permit or conditionally permit the cultivation, processing, manufacturing, testing, distribution, or the sale of cannabis or cannabis products in the City. The proposed cannabis regulatory ordinance being contemplated by City Council is subject to the City’s Planning and Zoning Code ability to permit the cultivation, processing, manufacturing, testing, distribution, and the sale of cannabis and cannabis products in the City pursuant to meeting specific requirements. The Zoning districts specific to implementing the proposed cannabis regulatory ordinance are the C-1 (Light Commercial) Zone, C-2 (Heavy Commercial) Zone, I (Industrial) Zone, and to the IP (Industrial Park) Zone. Absent amending the Planning and Zoning Code, the cultivation, processing, manufacturing, testing or the sale of cannabis or cannabis products within the City would not be possible. Therefore, staff is proposing to amend the Title X: Planning and Zoning of the City Municipal Code to enable the cultivation, processing, manufacturing, testing or the sale of cannabis or cannabis products in the City.

Staff proposes the following amendments to the City Municipal Code:

Title X: Planning and Zoning

Light Commercial Zones (C-1)

Section 10-3.802 details the uses permitted by right, by the Zoning Administrator, and via a use permit in the C-1 (Light Commercial) zone. Subsection (A) would be amended to allow the sale of cannabis and cannabis products in a C-1 zone by right as follows:

§ 10-3.802 USES PERMITTED.

(A) The following retail stores selling new merchandise exclusively and personal service establishments within a building, including:

...

~~(43) Other retail businesses or retail commercial enterprises which are similar in character or rendering neighborhood commercial services and are not more detrimental to the welfare of the neighborhood in which located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification;~~

(43) Cannabis and Cannabis Product Retail Sales as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

(44) Other retail businesses or retail commercial enterprises which are similar in character or rendering neighborhood commercial services and are not more detrimental to the welfare of the neighborhood in which located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification.

Heavy Commercial Zones (C-2)

Section 10-3.902 PERMITTED USES

Similarly, to the C-1 zone, Section 10-3.902 details allowable uses in the C-2 (Heavy Commercial) zone by right. Subsection (A) would be amended to allow the sale of cannabis and cannabis products in a C-1 zone by right as follows:

§ 10-3-9.202 PERMITTED USES.

(A) The following uses shall be permitted in the C-2 zone:

...

(7) Cannabis and Cannabis Product Retail Sales as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

Industrial Zones (I)

Section 10-3.1002

Section 10-3.1002 details allowable uses in the I (Industrial) zone by right, by the Zoning Administrator, and via a use permit Subsection (A) would be amended to allow the cultivation, distribution, manufacturing, testing labs, and retail of cannabis and cannabis products in Industrial Zones as follows:

§ 10-3.1002 USES PERMITTED.

(A) The following uses shall be permitted in I zones:

...

~~(17) Other retail and wholesale stores or storage and service establishments, light industrial and manufacturing uses determined by the Planning Commission to be similar in character and are not more detrimental to the welfare of the neighborhood in which they are located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification~~

(17) Cultivation, Distribution, Manufacturing, Testing Labs as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

(18) Retail only in conjunction with Vertical Integration Business as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

(19) Other retail and wholesale stores or storage and service establishments, light industrial and manufacturing uses determined by the Planning Commission to be similar in character and are not more detrimental to the welfare of the neighborhood in which they are located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification.

Industrial Park Zones (IP)

Sections 10-3.11.503 USES Section 10-3.11.503 details allowable uses in the IP (Industrial Park) zone. Subsection (A) would be amended to the cultivation, distribution, manufacturing, testing labs, and retail of cannabis and cannabis products in an IP zone subject to a use permit as follows:

§ 10-3.11.503 PERMITTED USES.

(A) The following uses shall be permitted in IP zones:

...

~~(10) Watches and clocks.~~

(11) Cultivation, Distribution, Manufacturing, Testing Labs as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

(12) Retail only in conjunction with Vertical Integration Business as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The zoning ordinance text amendment is exempt from CEQA as Division 13 of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction as it relates to commercial cannabis activity, so long as it is adopted prior to July 1, 2021.

RECOMMENDATION

The information presented in this report supports approval of a resolution approving an ordinance amending Sections 10-3.802, 10-3.902, 10-3.1002, and 10-3.11.505 of the Madera Municipal Code. It is recommended that the Commission consider the information in this report, together with testimony received during the public hearing, and make a decision regarding the ordinance to amend Sections 10-3.802, 10-3.902, 10-3.1002, and 10-3.11.505 of the Madera Municipal Code.

PLANNING COMMISSION ACTION

The Commission will be acting on ordinance amendment to either:

- Adopt a resolution recommending to City Council adoption of the ordinance text amendment;
- Continue the hearing; or
- Adopt a resolution recommending to City Council denial of the ordinance text amendment.

Motion 1: Move to adopt a resolution of the Planning Commission recommending the City Council of the City of Madera approval OTA 2021-01, amending the zoning code text as described herein, in order to establish consistency with the proposed Chapter 5 Cannabis Business Ordinance.

(OR)

Motion 2: Move to adopt a resolution of the Planning Commission recommending to the City Council of the City of Madera approval of OTA 2021-01, subject to the following recommendations (insert revised ordinance text).

(OR)

Motion 3: Move to adopt a resolution of the Planning Commission recommending to the City Council of the City of Madera denial of OTA 2021-01.

ATTACHMENT

Attachment 1: Planning Commission Resolution

RESOLUTION NO. 1883

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF MADERA ADOPTION
OF AN ORDINANCE AMENDING SECTIONS 10-3.802, 10-3-9.202 10-3.1002, AND
10-3.11.503 OF THE MADERA MUNICIPAL CODE RELATING TO AUTHORIZING
COMMERCIAL CANNABIS ACTIVITIES IN CERTAIN ZONE DISTRICTS OF THE CITY.**

WHEREAS, subsequent to the passage of Measure R by the City of Madera voters allowing for the taxation of cannabis businesses in the City, the City has been working towards drafting a cannabis regulatory ordinance; and

WHEREAS, the City has also been preparing appropriate cannabis related procedures; and

WHEREAS, Madera Municipal Code Section §4-15.02 prohibits commercial cannabis activities, including delivery, in the City; and

WHEREAS, on May 12, 2021, the City Council adopted Resolution No. 21-63 initiating a zoning text amendment (“ordinance”) to the City’s Municipal Code to allow for cannabis in certain zone districts consistent with the regulatory ordinance that Council will be considering for adoption; and

WHEREAS, on May 24, 2021, the Planning Commission held a duly noticed public hearing to consider an ordinance authorizing commercial cannabis in certain zone districts of the City; and

WHEREAS, the Planning Commission has completed its final review, evaluated the information contained in the Staff Report, and considered all public testimony.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

Recitals: The above recitals are true and correct and are incorporated herein.

CEQA: The proposed ordinance is exempt from CEQA as Division 13 of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction as it relates to commercial cannabis activity, so long as it is adopted prior to July 1, 2021.

Recommendation: It is recommended that the City Council of the City of Madera adopt an ordinance amending sections 10-3.802, 10-3.902, 10-3.1002, and 13-3.11.503 of the Madera Municipal Code substantially in the form attached in Exhibit A.

Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 24th day of May 2021, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP
Planning Manager

Exhibit "A" – Draft Ordinance,

PLANNING COMMISSION RESOLUTION NO. 1883

EXHIBIT "A"

DRAFT ORDINANCE

AN ORDINANCE OF THE CITY OF MADERA AMENDING SECTIONS 10-3.802, 10-3.902, 10-3.1002, AND 10-3.11.503 OF THE MADERA MUNICIPAL CODE RELATING TO AUTHORIZING COMMERCIAL CANNABIS ACTIVITIES IN CERTAIN ZONE DISTRICTS OF THE CITY.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 10-3.802 relating to the Light Commercial Zone District (C-1) of the Madera Municipal Code is amended to read as follows:

§ 10-3.802 USES PERMITTED.

- (A) The following retail stores selling new merchandise exclusively and personal service establishments within a building, including:
- (1) Appliance stores, sales and repair;
 - (2) Bakeries, limited to retail sales on the same premises;
 - (3) Banks;
 - (4) Barber shops;
 - (5) Beauty parlors;
 - (6) Bicycle repair and sales;
 - (7) Book stores;
 - (8) Candy stores;
 - (9) Department stores;
 - (10) Dressmaking or millinery shops;
 - (11) Drug stores;
 - (12) Dry goods or notions stores;
 - (13) Florist shops;
 - (14) Food stores (groceries, fruits, and vegetables);
 - (15) Hardware stores;
 - (16) Insurance offices;
 - (17) Jewelry stores;
 - (18) Meat markets or delicatessens;
 - (19) Nurseries (plant material and supplies);
 - (20) Offices, business or professional;

- (21) Service stations, but not including auto engine and transmission overhauling, tire rebuilding, or battery manufacture;
- (22) Restaurants and cafes;
- (23) Shoe shops, sales and repair;
- (24) Stationery stores;
- (25) Studios, photographic;
- (26) Tailor shops;
- (27) Single bay, fully automatic car wash accessory to a permitted use; and
- (28) Apparel stores and boutiques;
- (29) Art galleries;
- (30) Arts and craft studios;
- (31) Automobile parts and supply stores;
- (32) Clinics (medical and dental);
- (33) Electrical appliance repair shop (small appliances only);
- (34) Hobby supplies and craft sales;
- (35) Laundries;
- (36) Laundromat, self serve;
- (37) Locksmith and key shops;
- (38) Newspaper and magazine stands;
- (39) Newspaper and magazine stands;
- (40) Pet shops;
- (41) Pharmacies;
- (42) Video arcades of five or fewer games;
- (43) Cannabis and Cannabis Product Retail Sales as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code;
- (44) Other retail businesses or retail commercial enterprises which are similar in character or rendering neighborhood commercial services and are not more detrimental to the welfare of the neighborhood in which located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification.

SECTION 2. Section 10-3-9.202 relating to the Heavy Commercial Zone District (C-2) of the Madera Municipal Code is amended to read as follows:

§ 10-3.902 USES PERMITTED.

- (A) The following uses shall be permitted in the C-2 zone:
 - (1) Any use permitted in the C-1 zone.
 - (2) Wholesale stores and storage within buildings.

- (3) Building material yards.
- (4) Lumber yards.
- (5) Used secondhand merchandise within enclosed buildings.
- (6) Emergency shelter as provided in § 10-3.422.
- (7) Cannabis and Cannabis Product Retail Sales as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code;

SECTION 3. Section 10-3.1002 relating to the Industrial Zone District (I) of the Madera Municipal Code is amended to read as follows:

§ 10-3.1002 USES PERMITTED.

- (A) The following uses shall be permitted in I zones:
- (1) Animal hospitals, kennels and veterinarians;
 - (2) Automobile dismantling and use parts storage, provided such must be conducted wholly within a building;
 - (3) Boat-building works;
 - (4) Building materials, sales and storage;
 - (5) Dairy products processing;
 - (6) Dwelling for a caretaker or security guard and his immediate family, necessary and incidental to a use located in such zone;
 - (7) Electrical and electronic instruments, devices and appliances, manufacture and assembly;
 - (8) Garment manufacture;
 - (9) Ice and cold storage plants;
 - (10) Laboratory, experimental and testing;
 - (11) Machine shops;
 - (12) Pharmaceuticals and drugs, manufacture;
 - (13) Prefabrication of buildings;
 - (14) Stone monument works;
 - (15) Textile manufacturing;
 - (16) Accessory buildings and uses customarily incidental to any of the above uses;
 - (17) Cultivation, Distribution, Manufacturing, Testing Labs as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.
 - (18) Retail only in conjunction with Vertical Integration Business as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

- (19) Other retail and wholesale stores or storage and service establishments, light industrial and manufacturing uses determined by the Planning Commission to be similar in character and are not more detrimental to the welfare of the neighborhood in which they are located than any use listed in this subsection, unless such business or enterprise is hereafter in this chapter specifically listed in another classification

SECTION 4. Section 10-3.11.503 relating to the Industrial Park Zone District (IP) of the Madera Municipal Code is amended to read as follows:

§ 10-3.11.503 PERMITTED USES.

- (A) The following uses shall be permitted in IP zones:
 - (1) Apparel and other finished products made from fabrics and similar materials;
 - (2) Books, newspaper and magazine printing and publishing and allied industries;
 - (3) Electrical and electronic instruments, machinery, equipment and supplies manufacturing;
 - (4) Furniture and fixture manufacturing;
 - (5) Fabricated metal products manufacturing, except ordnance machinery and transportation equipment;
 - (6) Leather and leather products;
 - (7) Textile mill products;
 - (8) Professional, scientific, and controlling instruments;
 - (9) Photographic and optical goods;
 - (10) Cultivation, Distribution, Manufacturing, Testing Labs as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.
 - (11) Retail only in conjunction with Vertical Integration Business as authorized under the Cannabis Permit Ordinance of the City of Madera in Chapter 5 of Title VI of the Madera Municipal Code.

SECTION 5. CEQA. Until July 1, 2021, Business and Professions Code section 26055, subdivision (h), as amended, provides that the California Environmental Quality Act (CEQA) does not apply to adoption of an ordinance, rule, or regulation by local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. The proposed ordinance is subject to a statutory exemption from CEQA because the City requires discretionary review and approval, including applicable environmental review pursuant to CEQA of permits or other authorizations to engage in commercial cannabis activity.

SECTION 6. Severance. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. Publication. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

SECTION 8. Effective Date. This ordinance shall become effective _____

(Clerk's Certification and Attestation to be added)