



DATE: SEPTEMBER 26, 2017

TO: PLANNING COMMISSION

FROM: Vincent C. Ewing, City Attorney
Norma Copado, Deputy City Attorney

RE: Amendments to Title 19 Land Use and Development Regulations of the Chico
Municipal Code Regarding Cannabis Regulations

REPORT IN BRIEF

At the City Council meeting on September 19, 2017, the City Council gave direction to the City Attorney's office to draft an ordinance to streamline all marijuana and cannabis related City laws into one City ordinance to do the following:

- (a) Repeal Chapter 19.77 (Cultivation of Medical Marijuana) and incorporate provisions into the proposed Ordinance to allow for the personal cultivation of medical and recreational/non-medical cannabis, but indoors only;
- (b) Have one, uniform permitting scheme for the personal cultivation of both medical and recreational purposes;
- (c) Explicitly prohibit commercial cannabis activity citywide;
- (d) Regulate the smoking of cannabis in public; and
- (e) Ensure consistency with SB 94, the most current state law regulating cannabis (i.e., changes to definitions).

The City Council referred this matter to the Planning Commission to have a duly noticed public hearing before the Planning Commission in order to review and consider the proposed ordinance, make findings, and make a written recommendation to City Council as to the adoption of the proposed ordinance.

Recommendation:

The Community Development Director recommends that the Planning Commission hold a public hearing regarding the proposed amendments to Title 19; and adopt Resolution 17-17 recommending City Council adoption of an ordinance to repeal Chapter 19.77 (Cultivation of Medical Marijuana) and add Chapter 19.75 (Cannabis Regulations) to Title 19 of the Chico Municipal Code as set forth therein (see **Attachment A**).

Proposed Motion:

I move that the Planning Commission adopt Resolution No. 17-17 recommending City Council adoption of an ordinance to repeal Chapter 19.77 (Cultivation of Medical Marijuana) and add Chapter 19.75 (Cannabis Regulations) to Title 19 of the Chico

Municipal Code as set forth therein.

BACKGROUND

Currently, per Section 19.02.020(E) of the Chico Municipal Code, if a proposed use of land is not specifically listed under any zoning district or zone designation as a permitted or conditional use, the land use is not allowed. Commercial businesses, land uses, and activities related to marijuana, whether medical or recreational, are not specifically listed under any zoning district or zone designation, and therefore have been prohibited in the City of Chico.

In 2011, the City Council enacted Chapter 19.77 of the Chico Municipal Code, which regulates the personal cultivation of medical marijuana in residential districts. Said cultivation is allowed outdoors, and may be cultivated indoors by securing a City permit.

On November 8, 2016, the Control, Regulate and Tax Adult Use of Marijuana Act (“Proposition 64” or “AUMA”) was passed. Effective November 9, 2016, the AUMA legalizes the recreational use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants per residence. Generally, AUMA creates a state regulatory licensing system governing the commercial cultivation, testing, and distribution of recreational marijuana, and the manufacturing of recreational marijuana products. Under the state’s regulatory system, the state will issue marijuana businesses licenses commencing on January 1, 2018. However, under AUMA, state licenses cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation. The City is allowed to adopt ordinances regulating recreational marijuana business activities, or to completely ban them.

At the City Council meeting on March 7, 2017, the City Attorney made a presentation concerning the City's local regulatory authority per AUMA, the regulatory implications of AUMA, and the City's regulatory options. After The City Council had the opportunity to discuss the City's regulatory options, received input from City staff, and heard public comment, the City Council made three (3) motions directing the City Attorney to draft an ordinance to cover the following general regulatory tenets: (1) Explicitly prohibit all commercial marijuana activity; (2) Implement a permitting and regulatory scheme for indoor personal marijuana cultivation; and (3) Explicitly regulate the locations where smoking of marijuana is prohibited.

On May 16, 2017, the City Attorney presented the City Council with a proposed ordinance. A motion was carried to refer the item to the Planning Commission for consideration at a duly noticed public hearing to review and consider the proposed ordinance, make findings, and make a written recommendation to the City Council as to the adoption of the proposed ordinance.

On June 27, 2017, however, Governor Brown signed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“SB 94” or the “MAUCRSA”), creating one state regulatory structure for medical and recreational cannabis use and commercial cannabis activities. SB 94 also retains the provisions granting local jurisdictions control over whether commercial cannabis activity is allowed. SB 94 continues to provide that a

state licensing authority shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval of the state license will violate the provisions of any local ordinance or regulation.

SB 94 requires that a state licensing authority begin issuing licenses to marijuana businesses January 1, 2018. Pursuant to SB 94, the City is now required to provide the newly created Bureau of Cannabis Control (the "Bureau") with a copy of any ordinance related to commercial cannabis activity and the contact information for the person designated by the City to serve as the contact person regarding commercial cannabis activity within the jurisdiction. **Accordingly, it is imperative that the City have an adopted ordinance in advance of the January 1, 2018 date in order to place the state on notice as to the City's position concerning commercial cannabis activity so that the provisions of the City's local ordinance and regulations are not violated.**

On September 19, 2017, City Council gave the City Attorney's office further direction to streamline all marijuana related laws into one City ordinance (i.e., repeal Chapter 19.77 (Cultivation of Medical Marijuana) and revise the proposed ordinance previously presented to the City Council), to (a) allow for the personal cultivation of medical and recreational marijuana -- indoors only, (b) have one permitting scheme, (c) explicitly prohibit commercial cannabis activity citywide, (d) regulate the smoking of marijuana in public, and (e) ensure consistency with SB 94, so as ensure the City's ordinance is enacted before January 1, 2018.

DISCUSSION

The proposed ordinance (**Exhibit I to Attachment A**) concerns prohibited land uses and activities impacting all zoning districts and zones in the City's jurisdiction, as well as establishes a permitting and regulatory scheme for indoor personal cannabis cultivation for medical and recreational use in the City's residential zoning districts. Accordingly, the proposed ordinance impacts land uses and activities on property and citywide by adopting a new chapter to Title 19 of the Chico Municipal Code.

In adherence to Chapters 19.06 (Amendments to Plans and Zoning) and 19.10 (Noticing and Public Hearings) of Title 19 (Land Use and Development Regulations) of the Chico Municipal Code, the City Council referred this item to the Planning Commission to have a duly noticed public hearing before the Planning Commission in order to review and consider the proposed ordinance, make findings, and make a written recommendation to City Council as to the adoption of the proposed ordinance.

ENVIRONMENTAL REVIEW

The proposed Title 19 amendments do not propose any construction, demolition, or other activity that has the potential to negatively impact the environment, and are instead considered a refinement of the General Plan adoption process, and in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15162, the proposed amendments are within the scope of the Final Environmental Impact Report (EIR)

prepared and certified for the Plan in 2011 (State Clearinghouse #2008122038).

FINDINGS: TITLE 19 AMENDMENTS

Pursuant to Chico Municipal Code Section 19.060.050(B), amendments to the Municipal Code may be approved only if the following findings are made:

A. The proposed amendment is consistent with the General Plan.

The proposed amendments are consistent with the General Plan, specifically policies in the Land Use Element, including Policy LU-2.4 (Land Use Compatibility), which promotes land use compatibility through use restrictions and development standards, as well as Policy LU-3.4 (Neighborhood Enhancement) that calls for strengthening the character of existing residential neighborhoods and districts.

B. The proposed amendment is consistent with other applicable provisions of the Municipal Code and compatible with the uses authorized in the applicable zoning districts for which it is proposed.

The proposed regulations on personal cannabis cultivation activities and commercial cannabis activity are consistent with other applicable provisions of the Municipal Code and will result in greater compatibility of uses authorized in both residential and commercial zoning districts, and are intended to reduce various health and safety concerns and negative impacts to residents of the City of Chico.

PUBLIC CONTACT

A display ad for the October 5, 2017 Planning Commission meeting to consider the proposed Title 19 amendments was published in the September 25, 2017 *Chico Enterprise Record* and the September 27, 2017 *Chico News & Review*.

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ATTACHMENTS

- A. Resolution Recommending Council Adoption of Ordinance to Add Chapter 19.75 (Cannabis Regulations)
Exhibit I. Draft Council Ordinance

1 **RESOLUTION NO. 17-17**

2 **RESOLUTION OF THE CITY OF CHICO PLANNING COMMISSION**
3 **RECOMMENDING CITY COUNCIL ADOPTION OF AN ORDINANCE TO REPEAL**
4 **CHAPTER 19.77 (CULTIVATION OF MEDICIAL MARIJUANA) AND ADD CHAPTER**
5 **19.75 (CANNABIS REGULATIONS) TO TITLE 19 OF THE MUNICIPAL CODE**
6 **(CITY OF CHICO)**

7 WHEREAS, on June 27, 2017, Governor Brown signed SB 94, creating one state regulatory
8 structure for medical and recreational cannabis use, and commercial cannabis activities;

9 WHEREAS, to be consistent with state law, the City Council directed preparation of a
10 single ordinance to streamline the City’s regulations regarding medical and recreational cannabis
11 use, and commercial cannabis activities;

12 WHEREAS, the City Council provided further direction that the ordinance should (a) allow
13 for the personal cultivation of medical and recreational marijuana indoors only, (b) provide one
14 permitting and regulatory scheme for indoor personal marijuana cultivation, (c) explicitly
15 prohibit commercial cannabis activity citywide, (d) regulate the smoking of marijuana in public,
16 and (e) ensure consistency with SB 94;

17 WHEREAS, the Planning Commission considered the proposed amendments, staff report,
18 and comments at a duly noticed public hearing held in the manner required by law; and

19 WHEREAS, the proposed amendments do not propose any construction, demolition, or
20 other activity that has the potential to negatively impact the environment, and are instead
21 considered a refinement of the General Plan adoption process, and in accordance with California
22 Environmental Quality Act (CEQA) Guidelines Section 15162, the proposed amendments are
23 within the scope of the Final Environmental Impact Report (EIR) prepared and certified for the
24 Plan in 2011 (State Clearinghouse #2008122038).

25 NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of
26 Chico as follows:

27 1. The Planning Commission determines:

28 A. The proposed amendments are consistent with the General Plan, specifically policies
in the Land Use Element, including Policy LU-2.4 (Land Use Compatibility) which

1 promotes land use compatibility through use restrictions, development standards,
2 environmental review, and special design considerations, as well as Policy LU-3.4
3 (Neighborhood Enhancement) that calls for strengthening the character of existing
4 residential neighborhoods and districts; and

5 B. The proposed regulations on personal cannabis cultivation activities and commercial
6 cannabis activity are consistent with other applicable provisions of the Municipal
7 Code and will result in greater compatibility of uses authorized in both residential
8 and commercial zoning districts, and are intended to reduce various health and safety
9 concerns and negative impacts to residents of the City of Chico.

10 2. The Planning Commission recommends that the City Council approve the amendments
11 to the Chico Municipal Code as set forth in Exhibit I.

12 THE FOREGOING RESOLUTION WAS ADOPTED by the Planning Commission at its
13 meeting held on October 5, 2017, by the following vote:

14 AYES:

15 NOES:

16 ABSENT:

17 ABSTAINED:

18 DISQUALIFIED:

19
20 ATTEST:

APPROVED AS TO FORM:

21
22 _____
23 Brendan Vieg, Planning Commission Secretary

*Vincent C. Ewing, City Attorney

24
25 *Pursuant to the Charter of the City of Chico, Section 906(E)
26
27
28

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHICO, CALIFORNIA, ADDING CHAPTER 19.75 TITLED “CANNABIS REGULATIONS” TO TITLE 19 OF THE CHICO MUNICIPAL CODE TO EXPLICITLY PROHIBIT COMMERCIAL CANNABIS ACTIVITY, IMPLEMENT A PERMITTING AND REGULATORY SCHEME FOR INDOOR PERSONAL CANNABIS CULTIVATION FOR MEDICAL AND RECREATIONAL/NON-MEDICAL USE, EXPLICITLY PROHIBIT THE SMOKING OF CANNABIS IN DESIGNATED AREAS WITHIN THE CITY, AND ADOPT PROVISIONS TO BE CONSISTENT WITH THE ADULT USE OF MARIJUANA ACT AND SB 94

WHEREAS, the City of Chico (“City”) is a Charter City, incorporated under the laws of the State of California, and has the power to make and enforce within its jurisdictional limits all local, police, sanitary, and other ordinances and regulations;

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

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes”;

WHEREAS, in 2004 the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 *et seq.* and referred to as to the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes;

WHEREAS, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances;

WHEREAS, in 2011, the City Council passed and enacted Chapter 19.77 of the Chico Municipal Code, to allow and regulate the personal cultivation of medical marijuana in residential zoning districts within the City, pursuant to explicit requirements and restrictions;

**Attachment A
Exhibit I**

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WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land” Further, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana” The Court in *Maral* affirmed the ability of a local government entity to prohibit the cultivation of marijuana under its land use authority;

WHEREAS, on October 9, 2015 Governor Jerry Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively currently known as the Medical Cannabis Regulation and Safety Act (“MCRSA”, formerly “MMRSA”). MCRSA establishes a state-licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a state license. MCRSA allows the City to completely prohibit commercial medical marijuana activities;

WHEREAS, Business and Professions Code section 19340(a) provides that deliveries of marijuana can only be made in a city that does not explicitly prohibit it by local ordinance;

WHEREAS, on November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”), which became effective immediately, and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (i.e., recreational) marijuana, including marijuana products, for use by adults twenty-one (21) years of age and older;

WHEREAS, the AUMA sets an implementation date for commercial operations of January 1, 2018;

WHEREAS, pursuant to Business & Professions Code section 26200(a), the AUMA allows cities to ban all or part of the uses allowed under its provisions:

Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, **or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.** (*Emphasis added*);

WHEREAS, pursuant to Section 19.02.020(E) of the Chico Municipal Code, if a proposed use of land is not specifically listed under any zoning district or designated zone as a permitted or conditional use, the land use is not allowed. Commercial businesses, land uses, and activities related to marijuana, whether the marijuana is for medical or recreational purposes, are

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not specifically listed under any zoning district or designated zone, and therefore have been prohibited in the City of Chico;

WHEREAS, while the City Council believes that all commercial marijuana uses are prohibited pursuant to Section 19.02.020(E) of the Chico Municipal Code, it desires to enact this Ordinance to expressly make clear that all such commercial uses are prohibited in all zoning districts and designated zones throughout the City and to enact a comprehensive ordinance consistent with California state marijuana law provisions that authorize the City to enact local regulations consistent with its intent to prohibit all commercial marijuana activity, whether the marijuana is for medicinal or recreational purposes;

WHEREAS, the City Council has determined that allowing commercial medicinal and recreational businesses to locate in the City of Chico would not be in the best interests of the health, safety and general welfare of the community;

WHEREAS, the AUMA added, among other provisions, subdivision (a)(3) to Section 11362.1 of the Health and Safety Code (which all subsequent statutory references being to such Code) making it legal under state and local law for persons twenty-one (21) years and older to possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants, and possess the marijuana produced by the plants, upon the grounds of a private residence (hereinafter also, “personal cultivation activities”), provided such personal cultivation activities comply with various requirements set forth in Section 11362.2;

WHEREAS, notwithstanding the foregoing, in subdivision (b) of Section 11362.2 the AUMA allows cities to completely prohibit persons from engaging in outdoor personal cultivation activities, and while cities may not completely prohibit indoor personal cultivation activities, cities may enact and enforce reasonable regulations on indoor personal cultivation activities;

WHEREAS, personal cultivation activities give rise to, or pose a significant risk of giving rise to, various health and safety concerns and negative impacts to residents of the City of Chico, including but not limited to burglaries and robberies, trespassing, personal and property crimes, fire and building hazards, chemical and waste disposal, mold growth, offensive odors, and possession and use by persons under the age of twenty-one (21);

WHEREAS, in light of such concerns, in accordance with the intent and language of the AUMA, the City Council for the City of Chico desires to ban outdoor personal cultivation activities, and impose reasonable regulations on indoor personal cultivation activities;

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (“SB 94” or the “MAUCRSA”). SB 94 creates one state regulatory structure for medical and recreational cannabis use and commercial cannabis activities, reconciling AUMA, with Proposition 215 and MCRSA. SB 94 also retains the provisions of MCRSA and AUMA that granted local jurisdictions control over whether commercial cannabis activity is allowed. Specifically, California Business and Professions Code

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section 26200 provides that SB 94 shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the state. SB 94 continues to provide that a state licensing authority shall not approve an application for a state license for a business to engage in commercial cannabis activity if approval of the state license will violate the provisions of any local ordinance or regulation. SB 94 requires that a state licensing authority begin issuing licenses to cannabis businesses on January 1, 2018;

WHEREAS, SB 94 also makes amendments to state law concerning definitions related to marijuana and cannabis activity, and in an effort to be consistent with the most current state laws concerning the regulation of marijuana and cannabis, City Council desires to incorporate said applicable definitions within the City’s laws;

WHEREAS, in light of the state’s efforts with the passage of SB 94 to reconcile the two separate state regulatory schemes for medical and recreational cannabis, the City Council desires to streamline all marijuana and cannabis related City laws into one City ordinance by (a) repealing Chapter 19.77 and incorporating provisions there from into this Ordinance to allow for the *personal* cultivation of medical and recreational/non-medical cannabis, *but indoors only*, (b) have one, uniform permitting scheme for both, (c) explicitly prohibit commercial cannabis activity citywide, (d) regulate the smoking of cannabis in public, and (e) ensure consistency with SB 94, the most current state law regulating cannabis (i.e., changes to definitions);

WHEREAS, from an administrative and enforcement perspective, the City also wishes to streamline its laws concerning cannabis regulations into one ordinance in order to provide City staff enforcing said laws uniform guidelines, as well as requiring City residents desiring to cultivate in their private residences to have to adhere to only one permitting scheme. Those who do not wish to comply may exploit two separate ordinances, which may create enforcement and prosecutorial challenges for the City. Accordingly, one ordinance will provide City staff enforcing said laws one, uniform regulatory scheme, as the state will soon do; and

WHEREAS, the City Council for the City of Chico finds and declares that this Ordinance constitutes a valid exercise of police power in accordance with the City’s Charter, is consistent with the language and intent of the AUMA and SB 94, as well as marijuana and cannabis related state laws mentioned hereinabove, and furthers the health, safety, and general welfare of the residents of the City of Chico.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHICO

SECTION 1. Incorporation of Recitals

The City Council for the City of Chico finds and declares that the foregoing recitals are true and correct, and incorporates said recitals fully into this Ordinance as substantive findings.

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SECTION 2. Chapter 19.77 (“Cultivation of Medical Marijuana”) of Division V, “Site Planning and General Development Standards,” of Title 19, “Land Use and Development Regulations” of the Chico Municipal Code, is hereby repealed in its entirety.

SECTION 3. The Table of Contents of Division V, “Site Planning and General Development Standards,” of Title 19, “Land Use and Development Regulations” of the Chico Municipal Code, is hereby amended to read as follows:

DIVISION V. SITE PLANNING AND GENERAL DEVELOPMENT STANDARDS

19.60 General Property Development and Use Standards

19.62 Affordable Housing Incentives/Residential Density Bonuses

19.64 Agricultural Preservation Standards

19.66 Foothill Development Standards - *repealed by Ord. 2440*

19.68 Landscaping Standards

19.70 Parking and Loading Standards

19.72 Planned Development Standards - *deleted - Ord. 2382*

19.74 Signs

19.75 Cannabis Regulations

19.76 Standards for Specific Land Uses

~~19.77 Cultivation of Medical Marijuana~~

19.78 Wireless Telecommunications Facilities

SECTION 4. Chapter 19.75, “Cannabis Regulations” is hereby added to Division V, “Site Planning and General Development Standards,” of Title 19, “Land Use and Development Regulations” of the Chico Municipal Code, to read as follows:

Section:

19.75.010 Purpose.

19.75.020 Definitions.

19.75.030 Prohibitions.

19.75.040 Indoor Personal Cannabis Cultivation.

19.75.050 Permissive Zoning.

19.75.060 Smoking.

19.75.070 Public Nuisance.

19.75.080 Violations.

19.75.090 Effect on Other Ordinances.

19.75.100 Applicability of Provisions – Non-Compliance.

19.75.110 Severability.

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19.75.010 Purpose.

A. The purpose of this Chapter is to expressly prohibit commercial cannabis activity in the City of Chico, whether the cannabis is for medical or recreational commercial purposes.

B. The purpose of this Chapter is also to enact and enforce reasonable regulations on personal cannabis cultivation activities, for medical and recreational purposes, by enacting a permitting and regulatory scheme for this action in residential zoning districts.

C. Personal cultivation activities give rise to, or pose a significant risk of giving rise to, various health and safety concerns and negative impacts to residents of the City of Chico, including but not limited to burglaries and robberies, trespassing, personal and property crimes, fire and building hazards, chemical and waste disposal, mold growth, offensive odors, and possession and use by persons under the age of twenty-one (21). In light of such concerns, the City Council for the City of Chico desires to ban outdoor personal cultivation activities, and impose reasonable regulations on indoor personal cultivation activities for both medicinal and recreational purposes.

D. The City Council finds that a prohibition on all commercial cannabis activity, including commercial cultivation and cannabis deliveries, is necessary for the preservation and protection of the public health, safety and welfare for the City and its community. The City Council's prohibition of such activity is within the authority conferred upon the City Council by the City's Charter and applicable state law, and is an exercise of its police powers to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community.

19.75.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

A. "Accessory structure" shall mean a fully enclosed, lawful structure that is physically detached from, and secondary and incidental to, the existing primary structure of a "private residence," as that term is defined herein.

B. "California Adult Use of Marijuana Act" shall mean and refer to the provisions of California law added by Proposition 64, approved by California voters at the election occurring on November 8, 2016.

C. "Cannabis" shall mean all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The terms "marijuana" and "cannabis" shall be synonymous and have the same meaning. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

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2. The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other product.

D. “Cannabis products” shall mean cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

E. “City” shall mean the City of Chico.

F. “Code” shall mean the Chico Municipal Code, including all laws, ordinances, and regulations adopted and incorporated therein.

G. “Commercial cannabis activity” shall mean, and includes, the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, whether or not the cannabis or cannabis products is for medical or recreational purposes. “Commercial cannabis activity” is meant to include all cannabis related activities for which a State license is required, pursuant to applicable State laws, as they may be amended from time to time.

H. “Cultivation” shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

I. “Delivery” shall mean the transfer of cannabis or cannabis products, including the use of any technology platform to arrange for or facilitate the transfer of cannabis to or from any location within the City of Chico. “Deliver” or “delivery” shall also mean the actual, constructive, or attempted transfer from one person to another, or to or from any location within the City of Chico.

J. “Indoor” shall mean entirely within and inside a private residence, residential structure, or accessory structure.

K. “Medical cannabis” means cannabis used for medical purposes in accordance with the Compassionate Use Act of 1996 (Proposition 215), in accordance with California Health and Safety Code section 11362.5.

L. “Manufacture” shall mean to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

M. “Outdoor” shall mean any location within the City of Chico that is not within a fully lawfully existing enclosed structure.

N. “Permittee” shall mean any person having been issued and maintaining a valid personal cultivation permit under this Chapter.

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O. “Personal cultivation permit” or “permit” shall mean and refer to the permit issued by the City under this Chapter authorizing permittees to possess, plant, cultivate, harvest, dry, or process cannabis, cannabis plants, or the cannabis produced by the plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, pursuant to AUMA, and to a qualified patient or primary caregiver, in accordance with the Compassionate Use Act of 1996 (Proposition 215).

P. “Physician’s recommendation” means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

Q. “Primary caregiver” means the individual designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and as defined in Health and Safety Code section 11362.7.

R. “Private residence” shall mean a legally existing house, an apartment unit, a mobile home, or other similar dwelling, and inclusive of any rooms, garages, or structures physically attached thereto, identified by a lawful street address and/or an assessor parcel number. A lawful accessory structure located on the same parcel as a private residence shall be considered a part of that private residence.

S. “Qualified patient” means a qualified patient who is entitled to the protections of the Compassionate Use Act of 1996, and as defined in Section 11362.7 of the Health and Safety Code.

19.75.030 Prohibitions.

A. Commercial Cannabis Activity. Commercial cannabis activity, whether the cannabis is for medical or recreational purposes, is expressly prohibited in the City of Chico, including, but not limited, in all zoning districts and designated zones within the City of Chico. No person shall establish, operate, maintain, conduct, cause, allow or engage in commercial cannabis activity anywhere within the City. This subsection is meant to prohibit all cannabis related activities for which a State license is required. The City shall not issue any permit, license, variance or any other entitlement or permit, whether administrative or discretionary, for any establishment, operation or activity of any such business or commercial operation, or for any such activity for which a State license is required.

B. Medical Cannabis. With the exception of the indoor, personal cultivation of medical cannabis allowed or permitted in residential zoning districts pursuant to, and in accordance with, this chapter, the establishment or operation of any medical marijuana or cannabis collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered an explicitly prohibited use in the City of Chico, including in all zoning districts and designated zones of the City. Accordingly, the City shall not approve or issue any permit, license, variance or any other entitlement or permit, whether administrative or discretionary, for the establishment of any collective, cooperative, dispensary, delivery service, operator,

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establishment, or provider in any zoning district or designated zone, and no person shall otherwise establish such businesses or operations in any zoning district or designated zone within the City.

C. Personal Cannabis Cultivation for Medical or Recreational Use. With the exception of Section 19.75.040 that allows the personal cannabis cultivation of no more than six (6) plants in a private residence by first securing a permit from the City, personal cannabis cultivation shall be prohibited and considered unlawful in all areas of the City to the extent it is unlawful under California law.

D. Property Owners. A property owner shall not rent, lease, or otherwise allow, cause or allow any business that engages in commercial cannabis activity to occupy real property in the City. A property owner shall not allow any person or business to establish, operate, maintain, conduct, cause, allow, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the City. This is not intended to prohibit a property owner from providing written prior permission to lawful tenants for the personal cultivation of medical or recreational cannabis in a residential zoning district, as allowed in Section 19.75.040 of this chapter.

E. Deliveries. To the extent not already prohibited herein, delivery of cannabis or cannabis products, whether the cannabis is for medical or recreational purposes, to or from the City of Chico is expressly prohibited. No person shall conduct or perform any delivery of cannabis or cannabis products where the delivery either originates or terminates within the City. Nothing herein prevents the use and traversing of public roads within the City of Chico by a lawful business pursuant to state law.

F. Outdoor Cultivation. The outdoor cultivation of cannabis is expressly prohibited in the City of Chico, including all zoning districts and designated zones of the City of Chico.

19.75.040 Indoor Personal Cannabis Cultivation.

A. Purpose and Intent. It is the purpose and intent of this section to enact and enforce reasonable regulations to reasonably regulate the ability of an individual twenty-one (21) years of age or older to possess, plant, cultivate, harvest, dry, or process, for personal, noncommercial use, whether it is for medical or recreational uses, not more than six (6) living cannabis plants indoors and to possess the cannabis produced by the plants, all in accordance with the Adult Use of Marijuana Act of 2016 and, specifically, Sections 11362.1 and 11362.2 of the Health and Safety Code, as well as the Compassionate Use Act of 1996 (Proposition 215). The cultivation of cannabis for personal, noncommercial, medical and/or recreational use may only take place in accordance with this Chapter.

B. Indoor Personal Cultivation; Permit Required. It shall be unlawful for any person to plant, cultivate, harvest, dry, or process cannabis, cannabis plants, or the cannabis produced by the plants inside a private residence, or inside an accessory structure to a private residence located

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upon the grounds of a private residence, without first obtaining and maintaining a valid indoor personal cultivation permit under this Chapter.

C. Indoor Personal Cultivation Permit.

1. Application. Every person required to have a personal cultivation permit under this Chapter shall make an application therefor, in a form prescribed by the Community Development Director of the City. Upon the payment of the fee established by resolution or ordinance of the City Council, and upon determination that none of the grounds for denial as specified in Section 19.75.040(G)(1) exist, the Community Development Director shall issue to such person a permit which shall contain:

a. The name of the person to whom the permit is issued.

b. The permit number issued.

c. The address of the private residence for which the permit has been issued.

d. The date of expiration of such permit.

e. Any conditions imposed by the City, if in addition to those proscribed in this Chapter.

f. If the private residence is leased or rented private residence to the permittee, the name of the property owner(s) whom gave the express, written consent for the cannabis cultivation activities pursuant to this Chapter.

g. Such other information as may be deemed necessary.

2. No more than one (1) permit per private residence shall be issued and maintained at any one time, regardless of the number of persons dwelling or residing in the private residence or upon the grounds thereof, and regardless of how many qualified patients are living in the private residence.

D. Indoor Personal Cultivation Regulations.

1. Permittees issued a personal cultivation permit under this chapter shall, at all times, conduct the activities authorized by said permit in strict accordance with the requirements of this section, Chapter, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (SB 94), California Adult Use of Marijuana Act (Proposition 64), Compassionate Use Act of 1997 (Proposition 215), or whichever is more restrictive, as well as any conditions of approval imposed by the City.

a. All planting, cultivation, harvesting, drying, and processing (or similar actions) of cannabis plants, and the cannabis produced by the plants, shall be conducted entirely within the interior of a private residence or accessory structure.

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

c. Cultivation of cannabis shall not displace required off-street parking.

d. No permittee shall exercise or engage in any of the activities authorized by a personal cultivation permit, or otherwise engage in the planting, cultivation, harvesting, drying, and processing or cannabis plants, and the cannabis produced by the plants, except upon the grounds of a private residence of which the permittee is owner of the private residence, or a lawful, permanent resident who entered into a written lease agreement with the owner of the premises. For purposes of this paragraph, a lawful, permanent resident shall mean any permittee who, as of a given date, obtained the lawful right to occupy the private residence for more than thirty (30) consecutive days.

e. No cannabis may be cultivated in a leased or rented private residence without the prior express, written consent of the property owner. Said permittee shall obtain the written permission, including notarized signatures, of the legal owner(s) consenting to the indoor personal cultivation of cannabis on the private residence.

f. Not more than six (6) living cannabis plants may be planted, cultivated, harvested, dried, or processed upon the grounds of any single private residence.

g. A qualified patient, or his or her primary caregiver, who is in possession of a current, and valid physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the California Business and Professions Code, may submit to the City, as part of his or her permit application, or renewal thereof, that six (6) plants does not meet the qualified patient's needs. In this event, based on the objective, written documentation provided to the Community Development Director by the qualified patient's physician, up to eight (8) living plants in total may be planted, cultivated, harvested, dried, or processed upon the grounds of any single private residence by a qualified patient, or his or her primary caregiver. The intent of this subsection is to provide for an exception to the maximum allowed six (6) plants to qualified patients only, in order to acknowledge a medical need, pursuant to Section 11362.77(b) of the California Health and Safety Act.

h. All living cannabis plants, and any cannabis produced by the plants in excess of 28.5 grams, shall be kept within the private residence or accessory structure in a locked and secured space.

i. No living cannabis plants, cannabis cultivation activities, or equipment, shall be visible, and no odor, light, heat, or other environmental impacts associated with personal cultivation shall be detectable, from a public place, right-of-way, neighboring public or private property, or beyond the bounds of the grounds of the private residence at any time.

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j. All structures and buildings, or portions thereof, of a private residence used to cultivate cannabis pursuant to this Chapter shall, at all times, comply with all applicable laws and provisions concerning building and construction of structures, including, without limitation, the City's Land Use and Development Regulations pursuant to Title 19, as well as Building Regulations and Standards, pursuant to Titles 16 and 16R of the Chico Municipal Code, and the adopted and incorporated California Building Standards Code, as amended from time to time.

k. The indoor use of generators and/or gas products, including, without limitation, CO2, butane, propane, and natural gas shall be prohibited for the cultivation and/or processing of cannabis.

l. Not more potable water than is reasonably necessary to sustain six (6) living plants shall be utilized.

m. The lighting used for cultivation shall not exceed 1200 watts.

n. No nuisance shall be caused or maintained on the grounds of the private residence, including but not limited to those conditions set forth in Chapter 1.14 of this Code.

2. As a condition of approval of any application for any personal cultivation permit, the Community Development Director may, in his or her discretion, impose additional requirements and restrictions in addition to those expressly set forth in this section, to the extent such additional requirements and restrictions are necessary to ensure activities authorized by a personal cultivation permit are exercised in a manner that preserves and protects the public interest. In imposing such additional requirements and restrictions, the Community Development Director may consider such factors as the proximity of the private residence to sensitive land uses, the physical characteristics of the grounds of the private residence, and other relevant matters.

E. Enforcement and Inspection Authority.

1. Upon seventy-two (72) hour written notice, the Community Development Director, and any City police officer or code enforcement officer, shall have the right to enter into and upon the grounds of any private residence, and into or upon a private residence or accessory structure, for which a permit has been issued pursuant to this Chapter for purposes of conducting an inspection to ensure compliance with the requirements of this Chapter, and any applicable state law. A permittee's refusal to allow said inspection shall be grounds for revocation of the permit.

2. Notwithstanding the foregoing, the City shall make reasonable efforts to schedule and conduct the inspection authorized by this section at the date and time agreeable to be the permittee; provided that if the City makes reasonable efforts with a permittee to establish and agreeable date and time for an inspection, the failure of refusal of a permittee to establish an inspection date and time may be construed as a refusal to allow the inspection.

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3. This section shall not limit or be interpreted as limiting the authority of the City or any representative thereof to enter upon or into the grounds of a private residence, or the private residence itself, as otherwise may be authorized by law or pursuant to a court-issued warrant.

F. Sale or Transfer of Cannabis Prohibited.

1. It shall be unlawful for any person or permittee to sell, or otherwise transfer for any consideration whatsoever, cannabis plants or the cannabis produced by the plants, to any other person.

2. It shall be unlawful for any person or permittee to sell, transfer, give away, or provide access to cannabis plants, or the cannabis produced by the plants, to any person under the age of 21.

3. All medical cannabis cultivated pursuant to this Chapter, shall be for the personal use only of a qualified patient residing on the private residence and may not be distributed to any other person, collective, or cooperative.

G. Grounds for Permit Denial.

1. Grounds for denial. The Community Development Director shall deny any application for a permit or for the renewal thereof if the Community Development Director makes any of the following determinations:

a. The applicant has not first obtained or has not maintained in full force and effect the permit required under this Chapter prior to engaging in the activities authorized by the permit.

b. The private residence or accessory structure used, or proposed to be used, to engage in the activities fails to comply with all applicable health, safety, zoning, fire, building and safety laws and regulations.

c. The applicant has knowingly made any false, misleading, or fraudulent statement of material fact in the application for the permit, in the application for or renewal of the permit, or submitted any false, misleading or fraudulent documentation in support of a permit or renewal permit application.

d. The applicant is in violation of a provision of the Chico Municipal Code or owes taxes, fees, or penalties pursuant to this Chapter or any other provision of the Chico Municipal Code.

e. The applicant of a new permit, or for the renewal thereof, has had a permit denied or revoked by the City within the preceding twelve (12) months.

2. Notice of Denial. Upon determination of the existence of any factors or conditions specified in Section 19.75.040(G)(1) hereinabove, the Community Development Director shall advise the applicant by serving upon the applicant a notice of denial in writing within ten (10)

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business days of such determination. The notice of denial shall state the Community Development Director's findings and/or determinations that justify denial of the permit application, and shall include a summary of the evidence upon which such findings and/or determinations are based.

H. Permit – Posting or Storage. Permits issued pursuant to this Chapter shall be posted, kept, stored, or maintained in the private residence or accessory structure for which the permit was issued, and shall remain so posted, kept, stored, or maintained during the period the permit remains in force.

I. Permit – Duration and Renewal.

1. Permits issued pursuant to this Chapter shall be valid for two (2) years from the date of issuance, and shall expire immediately thereafter, unless timely renewed.

2. Permits issued pursuant to this Chapter may be renewed upon the filing of an application therefore with the Community Development Director. The application for renewal shall be in the same form as an application for an original permit. It shall be issued or denied in a like manner as in the case of the original permit.

J. Permit Fees. A filing and processing fee, in an amount established by resolution or ordinance of the City Council, shall be submitted with each application for an original permit, or applications for permit renewals. The fee provided for in this section is imposed to cover the cost of processing and reviewing permit applications, and to cover the cost of site inspections provided for in this Chapter. The fee provided for in this section may be amended from time to time by resolution of the City Council.

K. Transfer of Permit Prohibited. No permit issued pursuant to this Chapter shall be transferrable or assignable to any other person. The activities authorized by any permit issued pursuant to this Chapter shall only be conducted inside the private residence or accessory structure for which the permit was issued.

L. Permit Revocation.

1. Grounds for Revocation. The Community Development Director shall revoke any permit issued pursuant to this Chapter, if the Community Development Director makes any of the following findings or determinations:

a. There exists any ground for denial of the permit issued pursuant to this Chapter.

b. The permittee has knowingly made any false, misleading, or fraudulent statement of material fact in the application for a permit or in any report required to be filed by law.

c. The permittee has violated or is violating any condition of approval imposed on such permit, or upon any other entitlement granted by the City or other government agency.

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d. The permittee has violated or is violating any ordinance, law, or regulation of the City, Butte County, or State of California in the course of exercising any rights under the permit.

e. The permittee has been held liable for, or has been convicted of, any offense involving the maintenance of a nuisance resulting from any act performed in exercising any rights under the permit.

f. The continued activities under the permit would endanger, disrupt or otherwise be detrimental to the public peace, health, safety, morals or general welfare of the City or its inhabitants, or constitute a public nuisance.

2. Order of Revocation. The Community Development Director shall serve a written order of revocation upon the permittee the grounds for revocation and informing the permittee of his/her appeal rights (including method and timeline for requesting appeal). The order shall also advise the licensee/permittee of the effective date of the revocation.

3. Effectiveness of Order. Any permit revoked pursuant to the provisions of this Chapter shall become effective, and the permittee shall cease all activities authorized under such permit, no later than ten (10) calendar days from the service of the order of revocation. Where an appeal is timely filed in accordance with the provisions of this chapter, the notice of revocation shall be stayed pending the City Manager's resolution of the appeal pursuant to the provisions of this chapter.

M. Appeal of Permit Application Denial or Revocation of a Permit. The denial of any application for a permit, or the revocation of a City-issued permit, may be appealed to the City Manager, and such appeal shall be governed by the standards and procedures set forth in Section 19.12.040 of this Code. The applicant or permittee may seek prompt judicial review of such administrative actions or decision in a court of competent jurisdiction as provided by law, pursuant to Section 1094.6 of the California Code of Civil Procedure.

19.75.050 Permissive Zoning.

Nothing in this Chapter shall be interpreted to the effect that the City's permissive zoning scheme allows any other use not specifically listed herein.

19.75.060 Smoking.

A. No person shall smoke or ingest cannabis, whether for recreational or medical use, in any public place, including, but not limited to, a public right of way, alley, street, sidewalk, park, public building, structure or parking lot, or municipal airport.

B. Smoking of cannabis, whether for medical or recreational use, shall be prohibited in any building, structure, location, area or place where the Code currently prohibits the smoking of tobacco.

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19.75.070 Public Nuisance.

A. Any violation of this Chapter is hereby declared a public nuisance and, as such, may be abated pursuant to Chapter 1.14 of this Code, or enjoined from further operation within the City of Chico.

B. All means of enforcement authorized under this Code may be used to address violations of this Chapter, including, but not limited to: civil penalties, nuisance abatement, civil actions, and/or administrative citations. The City's pursuance of one remedy does not preclude the City from invoking any other one or more additional remedies for such violation.

19.75.080 Violations.

A. No person owning, leasing, occupying or having charge, control, or possession of any premises within the City shall cause, allow, suffer, or permit such premises to be used in violation of this Chapter.

B. Except for Section 19.75.060, which shall be subject to an infraction pursuant to state law, any person violating any provision of this Chapter shall be guilty of a misdemeanor, and shall be subject to the penalty therefor, as set forth in Section 1.04.120 of this Code. Any such person shall be guilty of a separate offense for each and every day a violation of the provisions of this Chapter is committed, continued, or permitted to be continued by such person.

C. Any person violating any provision of this Chapter may also be subject to the issuance of administrative citations, pursuant to Chapter 1.15 of this Code.

19.75.090. Effect on Other Ordinances.

The provisions of this Chapter shall control for regulation of cannabis activities as defined herein if other provisions of the Code conflict therewith. This Chapter shall not, however, relieve any person of his or her duty to comply with such laws if additional obligations, duties, or prohibitions are imposed thereby.

19.75.100 Applicability of Provisions – Non-Compliance.

A. The provisions of this Chapter shall apply to all personal cannabis cultivation, whether maintained prior to or after the effective date of any of the provisions of this Chapter. Those cannabis plants planted, cultivated, harvested, dried, or processed prior to the effective date of any provision enacted hereunder shall be brought into compliance with such provisions within thirty (30) calendar days of the effective date thereof.

B. Any private residence not brought into compliance within the aforementioned time period shall be deemed to be in violation of this Chapter and therefore subject to enforcement or abatement proceedings as authorized in this Chapter against any and all responsible persons.

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19.75.110. Severability.

If any section, subsection, sentence, or clause of this Chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.

SECTION 5. CEQA. The City Council, on the basis of the whole record and exercising independent judgment, finds that this Ordinance is not subject to environmental review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378.

SECTION 6. Severability. If any section, subsection, line, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Chico hereby declares that it would have passed this Ordinance, and each and every individual section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days after approval by the City Council.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance causing it to be posted as required by law.

THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico at its meeting held on _____, 2017, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAINED:

DISQUALIFIED:

APPROVED AS TO FORM:

ATTEST:

Vincent C. Ewing

Deborah R. Presson

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City Attorney*

City Clerk

*Pursuant to The Charter of the City of Chico, Section 906(E)

Attachment A
Exhibit I