I. CALL TO ORDER / FLAG SALUTE / ROLL CALL

II. ORAL COMMENTS FROM THE PUBLIC
   Members of the Public may be heard on any item on the Special Meeting Agenda. Speakers addressing
   the Council will be limited to 3 minutes per speaker. Be advised, by law the City Council cannot
deliberate or take action on issues presented during Oral Comments that are not shown on the Agenda.

III. BUSINESS ITEMS
   1. Review and Discussion of the City’s Marijuana Ordinance and Status of the County Marijuana
      Ordinance Amendments

IV. REPORT OUT AND ADJOURN
   Pursuant to Government Code Section 54957.5, any non-confidential documents or writings that the City
   distributes, less than 72 hours before a regular meeting, to all or a majority of the legislative body's members
   must be made available to members of the public at the same time as the distribution. Documents and
   information related to the agenda topics are available for review at City Hall, 621 11th Street, between the
   hours of 8:00 AM to 5:00 PM. Members of the public are invited to come to the meeting and comment. In
   compliance with the Americans with Disabilities Act, if you need special assistance to participate in this
   meeting, please contact the City Clerk at 725-7600. Notification prior to the meeting will enable the City
   to make reasonable arrangements to ensure accessibility to this meeting.

Siana L. Emmons
City Clerk
DATE: September 18, 2017
TO: Honorable Mayor and Council Members
FROM: Liz Shorey, Deputy Director of Community Development
THRU: Mark Wheeley, City Manager
SUBJECT: Review and Discussion of the City’s Marijuana Ordinance and Status of the County Marijuana Ordinance Amendments

STAFF RECOMMENDATION:

Receive presentation from staff, discuss with staff, receive public comments, and provide direction to staff regarding the draft marijuana ordinance.

EXECUTIVE SUMMARY:

At previous Council meetings, the Council has directed staff to amend the City’s marijuana prohibition Ordinance to confirm the prohibition of all commercial activities and nonmedical dispensing, deliveries, and cultivation, and to establish reasonable standards for personal cultivation. Proposition 64, Adult Use of Marijuana Act (AUMA), allows personal use of up to 28.5 grams of non-medical marijuana by persons over 21 years or older, and allows cultivation of up to 6 marijuana plants.

The attached draft Ordinance provides changes to the City’s existing ordinance, with additions to include commercial prohibition and to identify personal cultivation standards. The changes are shown in red underline and strike-through. Also attached are portions of review comments of the City’s draft provided by the City Attorney, which demonstrate what may or may not be allowed under the California regulations.

Following direction received at the workshop, staff will amend the City’s Ordinance and present it first to the Planning Commission in accordance with the Fortuna Municipal Code, followed by a first and second reading by the City Council.

RECOMMENDED COUNCIL ACTION:

1. Receive staff presentation and review questions with staff
2. Open Public Comment
3. Close Public Comment
4. Provide direction to staff

Attachments:
   - Draft Marijuana Ordinance
   - Review Comments.
17.06.120.5 Medical and Commercial Marijuana Prohibition and Regulation of Personal Cultivation.

DRAFT AMENDMENTS

A. Definitions.

“Cannabis” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(f) as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Cal. Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Cal. Bus. & Prof. Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(1) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(m) as the same may be amended from time to time.

“Dispensary” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative.

“Dispensary” shall not include the following uses:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Cal. Health & Safety Code;

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Cal. Health & Safety Code;
3. A residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Cal. Health & Safety Code;

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Cal. Health & Safety Code;

5. A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Cal. Health & Safety Code.

“Dispensing” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(y) as the same may be amended from time to time.

“Manufacturing site” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(af) as the same may be amended from time to time.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Cal. Bus. & Prof. Code § 19300.5(ag) as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015, as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Cal. Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(z) as the same may be amended from time to time.
“Transport” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5 (am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5 (aa) as the same may be amended from time to time.

B. Prohibited Activities.

1. Commercial cannabis activities of all types are expressly prohibited in all zones in the city of Fortuna. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the city.

2. To the extent not already covered by subsection (A) of this section, all deliveries of medical cannabis are expressly prohibited within the city of Fortuna. No person shall conduct any deliveries that either originate or terminate within the city, as described in FMC Chapter 8.35.

3. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the MMRSA or AUMA.

4. Cultivation of cannabis for noncommercial, commercial, medical, or personal purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones in the city of Fortuna, except as allowed by the Cal. Health & Safety Code and this section for personal cultivation. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the city, even for medical purposes.

C. Exceptions

1. Personal cultivation of up to six plants per residence is allowed as set forth in Cal. Health & Safety Code. Only six plants per parcel are allowed and only one permit per parcel shall be issued. All cultivation must take place within an enclosed permitted building located on the premises. It is unlawful for any person to engage in any personal cultivation without first applying for and receiving a personal cultivation permit from the Fortuna Police Department. The permit shall be issued under the following terms:

   a) Submittal of an application form as determined by the Fortuna Police Department.
   b) Payment of fee in an amount adopted by the Fortuna City Council.
   c) Applicants shall be subject to a background check, and people with prior convictions may not cultivate at home (this doesn't seem legal).
d) Renters must have written permission from landlords.

e) Initial home inspection prior to issuance of the permit by the Fortuna Police Department.

f) Home standards shall meet the following:
   i. Ventilation systems appropriate for indoor grows must be installed.
   ii. Fire safety including home wiring inspection by the Fortuna Building Department or the Fortuna Fire District, on-site fire extinguisher, and smoke alarms.
   iii. Evidence of a legal water source (approved on-site well or City water service).

   g) The permit shall be renewed annually, the residence shall be subject to an inspection by the Fortuna Police Department.

C. Public Nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this section shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Cal. Civ. Proc. Code § 731 or any other remedy available to the city.

D. Civil Penalties. In addition to any other enforcement permitted by this section, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney fees and costs to the prevailing party. (Ord. 2016-719 § 3).
Review of the City of Fortuna's Draft Amendments to Section 17.06.120.5 of its Zoning Code.

The proposed amendments have been prepared to address changes in the law that legalized the cultivation of a limited number of marijuana plants for personal use, enacted by the passage of Prop 64.- The Adult Use of Marijuana Act or "AUMA" in November of 2016.

Section B. 5 of the Draft Code Amendment contains the bulk of the new regulations. The City appears to be proposing the regulation of personal cultivation by way of a permit process, with issuance conditioned on compliance with a number of requirements and standards. Following are comments:

1. The proposed provisions appear to be on the conservative side. Although AUMA contemplates that personal cultivation may be subject to "reasonable" local regulations, there is ongoing debate as to whether a permit process for the personal cultivation of marijuana is legal. Most of the cities have specifically exempted personal cultivation from the permit process usually imposed on commercial marijuana activities. (A reasonable option would be for cities to require a property owner to provide notice of the intent to cultivate marijuana for personal use but do not require a permit.)

Similarly, Section 5.b also incorporates another hot-button issue, that of whether a fee can be charged for the right to grow marijuana for personal use. Again, the issue here is whether a fee falls within the type of reasonable restriction that AUMA contemplated could be imposed by local jurisdictions on personal cultivation. Without some justification for the fee, and proof that the fee was not enacted as a means of creating some impediment to permit issuance, imposition of a permit fee creates fodder for a legal challenge.

Finally, the requirement that applicants be subject to a background check, with a prior conviction (for an unidentified violation) acting as a bar to permit issuance, is overbroad and unenforceable as written. We are unaware of anything in AUMA that would support this condition. At a minimum, the City would need to create some nexus between this requirement and public health and safety needs, and would need to significantly limit the types of criminal convictions that would act as a bar to personal cultivation.

2. Section B.4, which prohibits cultivation of cannabis for noncommercial purposes, seems to conflict with the new language in Section 5 allowing personal cultivation.

3. With the exception of the provisions referenced above, the majority of the provisions in Section 5, including the introductory paragraph (which incorporates regulations set forth in AUMA) and portions of the new Code language that focus on safety issues, such as ventilation and fire standards in a given residence or accessory structure, appear to be in line with what other jurisdictions have adopted. The City may want to add something that specifically prohibits outdoor cultivation for personal use.

4. The City may wish to adopt some language addressing where recreational marijuana may be smoked in the City. Marijuana smoking is not usually contemplated in existing smoking prohibitions in city codes. It may be banned from all areas where tobacco products may not be used, either by federal, state or local law, which is actually a significant portion of the City. See Section 3.E. of the attached Interim Ordinance.