

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA HABRA, COUNTY OF ORANGE, CALIFORNIA, APPROVING ZONE CHANGE 21- 01 AMENDING LA HABRA MUNICIPAL CODE TITLE 18 (ZONING), CHAPTER 18.22 (“COMMERCIAL CANNABIS ACTIVITY”) TO MODIFY EXISTING DEVELOPMENT STANDARDS

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the “CUA”), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the “MMPA”), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act or MMRSA), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, testing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, testing, dispensing, and delivery within their jurisdictions. Under the MCRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: “Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.”; and

WHEREAS, on November 8, 2016, the electorate of the State of California approved Proposition 64 (“Prop 64”) which enacted the Adult Use of Marijuana Act (“AUMA”), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and will expressly allow local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, on June 27, 2017, the Governor approved Senate Bill 94 which combined the regulatory schemes for MMRSA and AUMA into a single, comprehensive regulatory scheme known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”),

WHEREAS, notwithstanding the CUA, the MMPA, MMRSA, and MAUCRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c) (10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers’ Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal.4th 729 (2013); and

WHEREAS, the City of La Habra on April 2, 2018 adopted an Ordinance repealing Section 18.08.140 (Cultivation of Marijuana Prohibited) of Chapter 18.08 (General Regulations) of Title 18 (Zoning) and adding Chapter 18.22 (Commercial Cannabis Activity) to Title 18 (Zoning) relating to commercial cannabis activities; and,

WHEREAS, on November 3, 2020 approved Measure W (City of La Habra Cannabis Business Tax/Regulation Ordinance of 2020) which allows for the establishment of a cannabis business tax and up to four (4) non-storefront cannabis retail facilities; and,

WHEREAS, the City Council of the City of La Habra on December 7, 2020 adopted an Ordinance to allow for non-storefront cannabis retail facilities and code amendments that incorporate standards for such uses and the establishment of a cannabis business tax; and,

WHEREAS, the City of La Habra wishes to amend provisions of Chapter 18.22 (Commercial Cannabis Activity) of Title 18 (Zoning Code) to modify existing development standards to require applicants to comply with all rules and regulations promulgated by the City relating to the application process; and,

WHEREAS, it is the purpose and intent of the City to regulate Commercial Cannabis Facilities and modifications to existing development standards within the City in a manner that is consistent with California law and promotes the health, safety, and general welfare of the residents and businesses within the City, while limiting any negative impacts and while continuing to prohibit all other types of commercial cannabis activities; and,

WHEREAS, the City desires to reduce the illegal market for Cannabis while minimizing the chances of social harm and creating jobs and revenue for the City; and,

WHEREAS, nothing in this Ordinance No. _____ (this “**Ordinance**”) shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under California state law, as amended, except to the extent otherwise specifically set forth; and,

WHEREAS, the Planning Commission held a duly noticed public hearing on February 8, 2021 to consider Zone Change 21-01 amending Chapter 18.22 (“Commercial Cannabis Activity”) of the La Habra Municipal Code to modify existing development standards to require applicants to comply with all rules and regulations promulgated by the City relating to the application process. The Planning Commission after considering all the written and oral evidence offered including the staff report and all attachments, recommended that the City Council approve Zone Change 21-01; and,

WHEREAS, the City Council of the City of La Habra, pursuant to the provisions of the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) find that the proposed modifications to Chapter 18.22 are exempt from the California Environmental Quality Act pursuant to the Business and Professions Code Section 26055(h), which provides that “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. This subdivision shall become inoperative on July 1, 2021”; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LA HABRA DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. Subdivision (10) is hereby added to Subsection (A) of Section 18.22.050 (“Disqualification of applications”) of Chapter 18.22 (“Commercial Cannabis Activity”) of Article 1 (“General”) of Title 18 (“Zoning”) of the La Habra Municipal Code as follows:

10. The Applicant has not complied with all rules and regulations promulgated by the City relating to the application process, including, but not limited to, the submission of an incomplete application and/or has failed to comply with the application form and related administrative policy submittal materials prepared pursuant to Section 18.22.040(A).

SECTION 3. Recognizing that there is a potential conflict between Federal and State law, it is the City Council’s intention that this Ordinance shall be deemed to comply with applicable State Law.

SECTION 4. The City Council determines that it is in the best interest of the residents of the City of La Habra to allow certain Commercial Cannabis Activities in compliance with applicable State Law, including MAUCRSA, be established and operated as permitted uses within certain areas of the City subject to the regulations and restrictions provided in this Ordinance. It is the City Council’s intention that nothing in this Ordinance shall be construed to:

1. Allow a Person to engage in conduct that endangers others or causes a public nuisance.
2. Allow any activity relating to Cannabis that is otherwise not permitted by the City and/or under State law.

SECTION 5. The City Council finds pursuant to the provisions of the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) find that the proposed modifications to Chapter 18.22 are exempt from the California Environmental Quality Act pursuant to the Business and Professions Code Section 26055(h), “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. This subdivision shall become inoperative on July 1, 2021”.

SECTION 6. If any section or provision of this Ordinance is for any reason held to be invalid, unconstitutional, illegal, or unenforceable by any court of competent jurisdiction, or contravened due to any preemptive legislation, then such section or provision shall be severed and shall be inoperative, and the6 remainder of this Ordinance shall remain in full force and effect.

SECTION 7. By regulating Commercial Cannabis Facilities and modifications to existing development standards, the City is undertaking action to preserve the general welfare through implementation of MAUCRSA. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to liability in money damages to any Person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any permitted Cannabis operation. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Ordinance shall not become a personal liability of any public officer or employee of the City. Nothing in this Ordinance shall be deemed or considered in any respects to constitute authorization to violate any law.

SECTION 8. The City Council held a duly noticed public hearing on March 1, 2021 to consider the request for Zone Change 21-01 amending Chapter 18.22 (“Commercial Cannabis Activity”) of the La Habra Municipal Code to modify existing development standards to require applicants to comply with all rules and regulations promulgated by the City relating to the application process. The City Council after considering all the written and oral evidence offered including the staff report and all attachments along with the Planning Commission’s recommendation, approves the codeamendments.

SECTION 9: This ordinance shall be effective 30 days after its final adoption.

SECTION 10: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2021.

Rose Espinoza, Mayor

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

ATTEST:

Laurie Swindell, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF LA HABRA)

I, Laurie Swindell, CMC, City Clerk of the City of La Habra, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. _____ introduced at a regular meeting of the City Council of the City of La Habra held on the 1st day of March, 2021, and duly adopted at a regular meeting held on the _____ day of _____, 2021, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Witness my hand and the official seal of the City of La Habra on this _____ day of _____ 2021.

Laurie Swindell, CMC
City Clerk