

ORDINANCE NO. 21-007

Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations At Title 9 Of The Emeryville Municipal Code To Allow Cannabis Manufacturing With A Minor Conditional Use Permit (CEQA Status: Not A “Project” Under Public Resources Code Section 21065, And Common Sense Exemption At CEQA Guidelines Section 15061(b)(3))

WHEREAS, on April 4, 2017, the City Council adopted Ordinance No. 17-002, amending the Planning Regulations to create the Cannabis Manufacturing use type and requiring this use type to obtain a major conditional use permit from the Planning Commission; and

WHEREAS, on June 1, 2021, the City Council held a study session to discuss obstacles to expansion of the cannabis industry in Emeryville, and directed staff to develop an amendment to the Planning Regulations to allow Cannabis Manufacturing to be approved with a minor conditional use permit instead of a major conditional use permit; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on August 26, 2021 to solicit public comments and review and consider the proposed amendment and then voted unanimously to recommend that the City Council adopt the amendment; and

WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on October 5, 2021 to solicit public comments and review and consider the proposed amendment; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto and all public comments for the proposed amendment to the Planning Regulations as set forth in this Ordinance and the applicable standards of the Emeryville Planning Regulations (“the Record”);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to amend the Planning Regulations to allow Cannabis Manufacturing to be approved with a minor conditional use permit instead of a major conditional use permit.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

The City Council of the City of Emeryville makes the following findings as required by Emeryville Municipal Code Sections 9-7.1305:

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- (a) That the proposed amendment is consistent with the General Plan;

The proposed amendment to the Planning Regulations to allow Cannabis Manufacturing to be approved with a minor conditional use permit is consistent with the following policy of the General Plan:

LU-P-26 Economic Development: “A mix of commercial uses to insulate the City’s fiscal base from downturns in particular markets shall be maintained.”

Allowing Cannabis Manufacturing with a minor conditional use permit will assist in insulating the City’s fiscal base from downturns by simplifying the process for approval of the use, which will bolster the City’s economy in this sector.

Moreover, Custom Manufacturing, Light Manufacturing, and Small Food Production are allowed in all of the same zoning districts as Cannabis Manufacturing, and do not require a major conditional use permit. All of the existing cannabis manufacturers in the City are similar in nature to Light Manufacturing, Custom Manufacturing and/or Small Food Production, so the proposed amendment would treat Cannabis Manufacturing consistent with those uses.

- (b) That the proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public;

The proposed amendment will benefit the public by adding to the economic base of the city and simplifying the process for establishing Cannabis Manufacturing businesses by allowing them to be approved administratively rather than requiring a Planning Commission public hearing and approval.

- (c) That the proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is not considered a “project” under Public Resources Code Section 21065 and is not subject to CEQA. Even if it were considered a project, it would be exempt from environmental review under the “common sense exemption” at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

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- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

SECTION THREE. AMENDING PROVISIONS OF THE PLANNING REGULATIONS IN TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE REGARDING CANNABIS MANUFACTURING

Provisions of the Planning Regulations in Title 9 of the Emeryville Municipal Code regarding Cannabis Manufacturing are hereby amended as follows (changes are denoted by ~~strikethrough type~~ for language that is deleted and double underlined type for new language):

Amendments to Chapter 2, “Use Classification”:

9-2.417 Manufacturing.

The transformation of materials or substances into new products by hand, machine, and/or chemical processes, including the fabrication of parts from raw materials, the assembling of component parts, and the blending of materials.

1. (f) **Cannabis Manufacturing.** Establishments engaged in Commercial Cannabis Activity, as defined in Section 5-28.03(f)(~~e~~) of Chapter 28 of Title 5.

Amendments to Article 22, “Cannabis-Related Activities”, of Chapter 5, “Citywide Use and Development Regulations”:

9-5.2205 Conditional Use Permit Required.

It is unlawful to engage in Cannabis Sales or Cannabis Manufacturing, as such use classifications are described in Chapter 2, without first obtaining a ~~major~~ conditional use permit ~~from the Planning Commission~~ pursuant to the procedures in Article 5 of Chapter 7. Cannabis Sales shall require approval of a major conditional use permit from the Planning Commission. Cannabis Manufacturing meeting the criteria of Section 9-5.703 may be approved with a minor conditional use permit; otherwise, it shall require approval of a major conditional use permit from the Planning Commission.

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9-5.2206 Conditions of Approval.

- (a) In approving a conditional use permit for Cannabis Sales or Cannabis Manufacturing, ~~the Planning Commission may designate such conditions~~ may be imposed as it ~~deems~~ deems necessary to fulfill the purposes of this Article, including, but not limited to, those deemed necessary to comply with the standards in Section 9-5.2207, and ~~may require~~ reasonable guarantees and evidence that such conditions are being, or will be, complied with may be required.
- (b) Conditional use permits for Cannabis Manufacturing shall be deemed to include the following conditions of approval related to the property on which the use is located, unless otherwise specified in their approvals:
- (1) Permitted Uses. This conditional use permit authorizes the following commercial cannabis activity and related uses at the property: the possession, manufacturing (without volatile solvents), distribution, processing, storing, laboratory testing, labeling, transportation, research and development, assembly of cannabis products, and delivery to end users only.
 - (2) Prohibited Uses. The following commercial cannabis activities and related uses are not allowed at the property: cloning, planting or cultivation of cannabis plants, manufacturing with volatile solvents, or direct dispensing or retail sales to the public.
 - (3) Future Sub-Tenants. Subject to state law and state regulations, the applicant may sub-lease the facility to other tenants engaging in cannabis commercial activity consistent with this conditional use permit, provided that each subtenant obtains an Operator's Permit from the Emeryville Police Department pursuant to Chapter 28 of Title 5 of the Emeryville Municipal Code, applicable state license/permits, and a Business License from the City of Emeryville, prior to commencing operations.
 - (4) Cannabis Consumption. Consumption, including smoking, inhaling, and ingesting, of cannabis is prohibited on the property, in the public right of way abutting the property or within a 600-foot radius of the property.
 - (5) Hours of Pick Up and Deliveries. Pick-ups and deliveries to the property shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m. The Police Chief may further impose conditions on pick-ups and deliveries through an Operator's Permit.
 - (6) Business Conducted within Building. All allowed commercial cannabis activity shall be conducted inside a building located on the property. No commercial cannabis activity shall be visible from the exterior of the building or from the public right of way abutting the property.
 - (7) Odor Control. All odors shall be contained on the property. If the City receives any odor complaints, the applicant or sub-tenant shall work with

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the Building Official to immediately abate any nuisance related to odor. Unresolved or repeated violations related to odor may be basis for suspension or revocation of the Operator's Permit or denial of Operator's Permit renewal.

Amendments to Article 5, "Conditional Use Permits", of Chapter 7, "Administration and Permits":

9-7.503 Major and Minor Conditional Use Permits.

As provided in Article 1, Planning Decision Authority, the Director, Planning Commission, and City Council have authority to act on applications for conditional use permits. Minor and major conditional use permits are established as follows:

- (a) **Minor Conditional Use Permits.** The Director considers and makes decisions to approve, approve with conditions, or deny minor conditional use permits applications. The Director, at his or her discretion, may refer any such application for a minor conditional use permit to the Planning Commission for a decision, in which case the application shall be reviewed under the major conditional use permit procedures. Minor conditional use permits include the following:
 - (2) A conditionally permitted use in any zoning district other than the RM zone in an existing building where the floor area is not increased by more than ten percent, including Cannabis Manufacturing, but excluding all other ~~except~~ uses of special concern as listed in Section 9-2.701.

SECTION FOUR. CEQA DETERMINATION

The City Council finds and determines that the proposed amendment is not considered a "project" under Public Resources Code Section 21065 and is not subject to CEQA; and even if it were considered a project, it would be exempt from environmental review under the "common sense exemption" at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment

SECTION FIVE. SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause and phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

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SECTION SIX. CODIFICATION

Section Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Four, Five, Six and Seven shall not be codified.


SECTION SEVEN. EFFECTIVE DATE AND POSTING


This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, October 5, 2021 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday October 19, 2021 by the following vote:

AYES:	<u>4</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

ATTEST:

DocuSigned by:

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 CITY CLERK

DocuSigned by:

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 MAYOR

APPROVED AS TO FORM:

DocuSigned by:

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 INTERIM CITY ATTORNEY