

ORDINANCE NO. 20-

Ordinance Of The City Council Of The City Of Emeryville To Modify Sections of Chapter 28 of Title 5 Of The Emeryville Municipal Code, "Cannabis"; CEQA Determination Exempt Pursuant to CEQA Guideline Section 15061(b)(3)

WHEREAS, under the authority of the then-existing Medical Cannabis Regulation and Safety Act ("MCRSA") and Proposition 64, known as the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") on April 4, 2017, the City Council adopted Ordinance No. 17-003, which established a regulatory framework to govern commercial cannabis activity within the City; and

WHEREAS, in June 2017, the California State Legislature passed a budget trailer bill, Senate Bill 94, to integrate the MCRSA and the AUMA to create a single state regulatory system for both medical and adult-use cannabis, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and

WHEREAS, in January 2019, the California Office of Administrative Law officially approved state regulations for cannabis businesses across the supply chain; and

WHEREAS, this Ordinance is to modify the City's existing local regulatory framework to ensure efficient implementation within the MAUCRSA and is adopted pursuant to the City's police powers, afforded by the state constitution and state law, and as recognized by the MAUCRSA to protect the health, safety, and welfare of the public;

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

SECTION ONE. MODIFYING EMERYVILLE MUNICIPAL CODE SECTION 5-28.01(i)

Section 5-28.01(i) of the Emeryville Municipal Code is hereby amended as follows. Additions are in **bold underline** text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged.

- (i) The MCRSA and AUMA set forth a comprehensive framework to regulate Cannabis and Cannabis products from seed to ingestion by a consumer, which includes uniform health and safety standards designed to implement quality control, a labeling and a track-and-trace program, and other consumer protections, which mitigates against some of the potential adverse impacts identified by the City Council in the past, **and the California State Legislature subsequently has adopted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Cal. Bus. & Prof. Code § 26000, et seq.) to integrate the MCRSA and the AUMA into a single state regulatory system;**

SECTION TWO. MODIFYING EMERYVILLE MUNICIPAL CODE SECTION 5-28.03 DEFINITIONS.

Section 5-28.03 of the Emeryville Municipal Code is hereby amended as follows. Additions are in **bold underline** text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged.

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

- (a) ~~“AUMA” refers to the California state law entitled “Control, Regulate and Tax Adult Use of Marijuana Act of 2016”, also known as Proposition 64, and any regulations promulgated thereunder.~~
- (ba) “Cannabis” includes marijuana and means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not, the seeds thereof, the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include industrial hemp, as defined in Health and Safety Code section 11018.5, **or synthetic cannabis as defined in Health and Safety Code section 11357.5(c).**
- (eb) “Cannabis Business” means a business or enterprise engaged in Commercial Cannabis Activity.
- (ec) “Cannabis Business Owner” means **“owner” as defined in the MAUCRSA.**any of the following:
- (1) ~~Each person or entity having an ownership interest in the Commercial Cannabis Business, other than a security interest, lien, or encumbrance on property that will be used by the Commercial Cannabis Business;~~
 - (2) ~~If the Commercial Cannabis Business is a publicly traded company, the chief executive officer or any person or entity with an aggregate ownership interest of five percent (5%) or more; or~~
 - (3) ~~Each person who participates in the direction, control, or management of, or has a financial interest in, the Commercial Cannabis Business.~~
- (ed) “Cannabis Product” means marijuana or 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 marijuana and other ingredients.
- (fe) “Commercial Cannabis Activity” includes possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, research and

development, delivery or sale of Cannabis or Cannabis products for commercial purposes, whether for profit or non-profit.

(gf) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of Cannabis.

(g) “Dispensary/retailer permit” is a type of permit as described in Section 5-28.04 of this Chapter for a cannabis business that engages in commercial cannabis activity that involves selling cannabis directly to the consumer. Cannabis businesses engaged in commercial cannabis activity that require a Type 10-Retailer state license under the MAUCRSA require a dispensary/retailer permit.

(h) “MAUCRSA” refers to the California state law Medicinal and Adult-Use Cannabis Regulation and Safety Act” (Cal. Bus. & Prof. Code § 26000, et seq.) and regulations promulgated thereunder.

~~(h) “MCRSA” refers to the California state law entitled Medical Cannabis Regulation and Safety Act and regulations promulgated by thereunder.~~

(i) “Permit” refers to ~~any one of the permits described in Section 5-28.04 of this Chapter.~~

(j) “Primary caregiver” shall have the same meaning as set forth in ~~California Business and Professions Code section 19300.5(h), as that section now appears, or may hereafter be amended or renumbered~~ **the MAUCRSA.**

~~(k) “Qualified patient” means a patient that uses or ingests medical cannabis as that term is defined in California Business and Professions Code section 19300.5(ag) and who is entitled to the protections of California Health and Safety Code section 11362.5.~~

**SECTION THREE. MODIFICATIONS TO EMERYVILLE MUNICIPAL CODE
SECTION 5-28.04, PERMIT REQUIREMENT – EXEMPTIONS FROM PERMIT
REQUIREMENT**

Section 5-28.04(b) of the Emeryville Municipal Code is repealed and replaced with the following text as shown below in **bold underline** text:

(b) Subject to the provisions of this Chapter, the Police Chief may issue a permit to a cannabis business that engages in commercial cannabis activity that requires a state-issued Type 6-Manufacturer 1, Type 7-Manufacturer 2, Type 8 – Testing Laboratory, Type 10 – Retailer, Type 11 – Distributor or Type 12 – Microbusiness, license under the MAUCRSA. In addition, the Police Chief may

issue a permit for a temporary cannabis event to a cannabis business that holds either a Type 10 – Retailer license or Type 12-Microbusiness license from the State of California and a dispensary/retailer permit from the Police Chief for a storefront dispensary.

- (1) If the State develops additional licenses for cannabis activities, the Police Chief has the discretion to issue a permit to the extent the additional license or sub-license is similar to license types identified in this Section, or is similar to research and development.**
- (2) No permit shall issue if the cannabis activity is not a permitted land use in the City.**

“MCRSA” is replaced with “MAUCRSA” in Section 5-28.04(c)(6) of the Emeryville Municipal Code.

SECTION FOUR. REPEALING SECTIONS 5-28.05(i), AND SECTION 5-28.06(e)(1) OF THE EMERYVILLE MUNICIPAL CODE RELATED TO DELIVERY PERMITS

Sections 5-28.05(i) and 5-28.06(e)(1) of the Emeryville Municipal Code shall be repealed and the sub-sections of Sections 5-28.05 and 5-28.06(e) of the Emeryville Municipal Code shall be renumbered accordingly.

SECTION FIVE. MODIFYING SUB-SECTIONS (5) AND (7) OF 5.28.06(d) OF THE EMERYVILLE MUNICIPAL CODE TO REFER TO MAUCRSA

“MAUCRSA” shall replace “either the MCRSA or AUMA” in sub-section (5) and “the MCRSA, AUMA” in sub-section (7) of Section 5.28.06(d) of the Emeryville Municipal Code.

SECTION SIX. MODIFYING SECTION 5-28.10(b) OF THE EMERYVILLE MUNICIPAL CODE, “HOURS OF OPERATION”

Section 5-28.10(b) of the Emeryville Municipal Code is hereby amended as follows. Additions are in **bold underline** text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged

Hours of Operation. ~~All permitted facilities shall be closed to the general public and transporter~~ **Commercial cannabis** deliveries and pick-ups **between cannabis businesses** shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m. With the exception of activities authorized pursuant to a dispensary/retailer permit, **all permitted facilities are closed to the general public, and** no direct sales of cannabis or cannabis product to the general public may occur upon the premises. **Cannabis businesses with a dispensary/retailer permit may deliver to consumers as provided for in the MAUCRSA.**

SECTION SEVEN. REPEAL OF EMERYVILLE CODE SECTION 5-28.11, "Conditions for Specific Permits"

Emeryville Municipal Code section 5-28.11 is hereby repealed in its entirety and the remaining sections of Chapter 28 of Title 5 of the Emeryville Municipal Code shall be renumbered accordingly.

SECTION EIGHT. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

SECTION NINE. SEVERABILITY

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

SECTION TEN. EFFECTIVE DATE

This Ordinance shall take effect thirty (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.

SECTION ELEVEN. CODIFICATION

Sections One, Two, Three, Four, Five, Six and Seven of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Eight, Nine, Ten and Eleven shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a special meeting on Thursday, March 19, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, April 7, 2020.

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY