ORDINANCE NO. 17-002

An Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 Of The Emeryville Municipal Code To Add Article 22 To Chapter 5 Concerning Standards For Cannabis-Related Activities And To Make Other Related Modifications To The Planning Regulations

WHEREAS, the City of Emeryville has prohibited activities related to cannabis since 2006 (Emeryville Municipal Code Title 5, Chapter 28, "Marijuana"), and on January 19, 2016, the City Council adopted an urgency ordinance and introduced a regular ordinance re-affirming the City's prohibition; and

WHEREAS, on March 15, 2016, the City Council held a study session focusing on medical cannabis and provided direction to staff to prepare regulations that allow personal cultivation of cannabis for patients or their primary caregivers, manufacturing and testing of medical cannabis and related products, and a dispensary for medical cannabis; and

WHEREAS, since the City Council direction, Proposition 64, the Adult Use of Marijuana Act ("AUMA"), a voter initiative that allows cultivation, manufacturing and retail sale of cannabis and cannabis-related products for recreational purposes, was passed on November 8, 2016; and

WHEREAS, Proposition 64 allows each residence to cultivate six cannabis plants for personal use, subject to any reasonable local regulations, and allows local jurisdictions to prohibit commercial cannabis activity, e.g., to prohibit the land uses of cultivation, manufacturing, testing, distribution and retail sale; and

WHEREAS, although the City Council was aware that Proposition 64 would be on the November 2016 ballot at the time of its March 2016 study session, the City Council did not provide any explicit direction on regulations for recreational cannabis, but, instead, indicated only that they may be open to allowing recreational cannabis commercial activities if the proposition were to pass; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on December 8, 2016 and then approved and recommended adoption of the proposed Ordinance; and

WHEREAS, the City Council held a duly and properly noticed public hearing on March 21, 2017 and considered the proposed Ordinance; and

WHEREAS, the City Council finds that land use impacts of medical and recreational cannabis are the same and therefore no separate use classifications or regulations are necessary; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed Ordinance and the applicable provisions of the Emeryville Municipal Code ("the Record");

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

SECTION ONE. 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:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment to the Zoning Ordinance to add a new article pertaining to cannabis-related activities and to make related modifications to the Planning Regulations would be consistent with the following provisions of the General Plan:

Goal PP-G-8: A safe, nurturing, and enriching environment, and Goal CSN-G-1: Public health. Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and are regulated similarly. Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities and are regulated similarly. The proposed amendments restrict the location of retail sale of cannabis products from the vicinity of sensitive uses including schools, religious institutions, and parks; add performance standards for cultivation of cannabis plants that are permitted by State law; and regulate manufacturing of cannabis products to a level similar to pharmaceutical products.

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

The proposed amendment to the Planning Regulations will protect the public health, safety, and general welfare and will be of benefit to the public by establishing appropriate locational criteria and standards for cannabis-related activities.

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

The proposed amendment to the Planning Regulations has been determined to be exempt from environmental review under the "general

rule" at Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed Standards for Personal Cultivation would address any potential impacts of this accessory use.

SECTION TWO. ADDING ARTICLE 22, "CANNABIS RELATED ACTIVITIES" TO CHAPTER 5 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Article 22 is hereby added to Chapter 5 of Title 9 of the Emeryville Municipal Code to read as follows:

ARTICLE 22. CANNABIS-RELATED ACTIVITIES

Sections:

9-5.2201 Purpose
9-5.2202 Applicability
9-5.2203 Home Occupations
9-5.2204 Districts Where Allowed
9-5.2205 Conditional Use Permit Required
9-5.2206 Conditions of Approval
9-5.2207 Standards
9-5.2208 Definitions

9-5.2201 Purpose.

This Article establishes regulations governing personal cultivation, manufacturing and sales of cannabis and cannabis products. The purpose of these regulations is to provide criteria for the consideration and approval of personal cultivation and businesses engaged in the manufacturing and sales of cannabis and cannabis products. The City finds it necessary to establish such requirements and criteria in the interest of the public health, safety and welfare to regulate all cannabis-related activities.

9-5.2202 Applicability.

This Article shall apply to the establishment of all land uses related to Cannabis and Cannabis Products.

9-5.2203 Home Occupations.

It is unlawful to engage in Commercial Cannabis Activity as defined in Section 5-28.30(f) of Chapter 28 of Title 5 of the Emeryville Municipal Code, as a Home Occupation as defined in Article 8 of this Chapter.

9-5.2204 Districts Where Allowed.

(a) **Personal Cultivation.** Pursuant to State Law, cultivation of no more than six cannabis plants is permitted as an accessory use in all zoning districts subject to the standards in Section 9-5.2207(a).

(b) **Cannabis Sales and Cannabis Manufacturing.** Cannabis Sales and Cannabis Manufacturing are conditionally permitted in zoning districts as indicated in Table 9-3.202.

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.

9-5.2206 Conditions of Approval.

In approving a conditional use permit for Cannabis Sales or Cannabis Manufacturing, the Planning Commission may designate such conditions as it 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.

9-5.2207 Standards.

(a) Personal Cultivation of cannabis plants shall comply with all of the following standards:

(1) Growing, processing, or transporting of cannabis plants for personal use must be in full compliance with all the applicable provisions of California law.

(2) Cannabis plants shall be grown, possessed, and processed within the residence of the person growing, possessing and processing the cannabis plants for personal use. No more than six plants may be cultivated in a private residence, as defined in Health and Safety Code section 11362.2(b)(5).

(3) Cannabis plants shall not be grown or processed in the common areas of a multi-unit residential development nor in common areas of any commercial or industrial building.

(4) Cannabis growth shall meet the requirements of all applicable building and life/safety codes, including requirements concerning electrical systems and ventilation systems.

(5) Any use of a compressed flammable gas as a solvent or other volatile solvent in the extraction of THC or other cannabinoids for personal use is prohibited.

(b) Cannabis Manufacturing shall comply with all applicable performance standards in Article 11 of this Chapter and with all applicable general conditions in Chapter 28 of Title 5.

(c) Cannabis Sales shall not be located within 250 feet of any school, day care facilities, religious institution or public park, and shall comply with all applicable performance standards in Article 11 of this Chapter and with all applicable general conditions in Chapter 28 of Title 5.

9-5.2208 Definitions.

(a) "Cannabis." See Section 5-28.03(b) of Chapter 28 of Title 5.

(b) "Cannabis Product." See Section 5-28.03(e) of Chapter 28 of Title 5.

(c) "Commercial Cannabis Activity." See Section 5-28.03(f).

(d) "Cultivation." See Section 5-28.03(g) of Chapter 28 of Title 5.

(e) "Public park" means a park, playground, swimming pool, beach, pier, or athletic field within the city which is under the control, operation, or management of the City or a site that is planned for a public park in the City's General Plan.

(f) "Religious institution" means a building which is used primarily for religious worship and related religious activities.

(g) "School" means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or a special institution of learning under the jurisdiction of the State Department of Education, or a site that is planned for such school uses in the City's General Plan, but it does not include a vocational or professional institution or any institution of higher education, including a community or junior college, college or university.

SECTION THREE. AMENDING SECTIONS 9-2.353 AND 9-2.417 TO ARTICLE 3 OF CHAPTER 2 ("USE CLASSIFICATION") OF TITLE 9 OF THE EMERYVILLE MUNICPAL CODE

Amendments to Sections 9-2.353, 9-2.417, 9-2.701 and 9-2.702 of Chapter 2 ("Use Classification") of Title 9 of the Emeryville Municipal Code are denoted by ~~strikethrough type~~ for language that is deleted and double underlined type for new language.

CHAPTER 2. USE CLASSIFICATION

ARTICLE 3. COMMERCIAL AND INSTITUTIONAL USE TYPES

9-2.353. Retail.

(i) **Cannabis Sales**. Establishments engaged in the business of selling cannabis or cannabis products, as such products are defined in Section 5-28.30(e) of Chapter 28 of Title 5, for off-site and on-site consumption.

ARTICLE 4. INDUSTRIAL USE TYPES

9-2.417 Manufacturing.

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

ARTICLE 7. PRINCIPAL AND ACCESSORY USES

9-2.701 Uses of Special Concern.

(i) Retail

(4) Cannabis Sales

(m) Manufacturing

(3) Cannabis Manufacturing

9-2.702 Uses That Are Always Accessory Uses.

(p) **Personal Cultivation of Cannabis Plants.** Growing, possessing, processing, or transporting of cannabis plants for personal use in compliance with applicable provisions of California law. See also Article 22 of Chapter 5.

SECTION FOUR. AMENDING SECTION 9-3.202 AND TABLE 9-3.202 TO ARTICLE 2 OF CHAPTER 3 ("ZONING DISTRICTS") OF TITLE 9 OF THE EMERYVILLE MUNIICPAL CODE

Amendment to Section 9-3.202 and Table 9-3.202 of Chapter 3 ("Zoning Districts") of Title 9 of the Emeryville Municipal Code are denoted by ~~strikethrough type~~ for language that is deleted and double underlined type for new language.

CHAPTER 3. ZONING DISTRICTS

ARTICLE 2. USES PERMITTED, CONDITIONALLY PERMITTED, AND PROHIBITED

9-3.202 Uses Permitted, Conditionally Permitted and Prohibited.

Uses, as classified in Chapter 2, are permitted, conditionally permitted, or prohibited in base and overlay zones as indicated in Table 9-3.202. Uses not classified in Chapter 2 are prohibited. The regulations for each use in each zone are established by letter designations as follows:

[Remainder of text preceding Table 9-3.202 is unchanged.]

Table 9-3.202: Uses Permitted, Conditionally Permitted, and Prohibited.

	Base Zones													
Use Classifications	RM Medium Density Residential	RMH Medium High Density Residential	RH High Density Residential	MUR Mixed Use with Residential	MURS Mixed Use with Residential South	MUN Mixed Use with Non-Residential	OT Office/Technology	OT/DH Office/Technology Doyle Hollis North Area	INL Light Industrial	INH Heavy Industrial	P Public	M Marina	PO Park/Open Space	SM Shoreline Management
Commercial and Institutional														
Retail														
Cannabis Sales	X	X	X	C	C	C	X	X	X	X	X	X	X	X

	Base Zones													
Use Classifications	RM Medium Density Residential	RMH Medium High Density Residential	RH High Density Residential	MUR Mixed Use with Residential	MURS Mixed Use with Residential South	MUN Mixed Use with Non-Residential	OT Office/Technology	OT/DH Office/Technology Doyle Hollis North Area	INL Light Industrial	INH Heavy Industrial	P Public	M Marina	PO Park/Open Space	SM Shoreline Management
Industrial														
Manufacturing														
Cannabis Manufacturing	X	X	X	X	X	C	C	C	C	C	X	X	X	X

SECTION FIVE. AMENDING TABLE 9-4.404 TO ARTICLE 4 OF CHAPTER 4 ("SITE DEVELOPMENT REGULATIONS") OF TITLE 9 OF THE EMERYVILLE MUNIICPAL CODE

Amendment to Table 9-4.404 of Chapter 4 ("Parking and Loading") of Title 9 of the Emeryville Municipal Code are denoted by ~~strikethrough type~~ for language that is deleted and double underlined type for new language.

CHAPTER 4. PARKING AND LOADING

ARTICLE 2. USES PERMITTED, CONDITIONALLY PERMITTED, AND PROHIBITED

9-4.404 Calculation of Parking Requirement.

Table 9-34.404: Estimated Parking Demand

Use Type	Number of Spaces	Per
Commercial and Industrial Use Type		
Retail		
Cannabis Sales	3	1,000 gross square feet
Industrial Use Types		
Manufacturing		
Cannabis Manufacturing	1	1,000 gross square feet

SECTION SIX. DELETING SECTION 9-5.207 OF CHAPTER 5 ("CITYWIDE USE AND DEVELOPMENT REGULATIONS") OF TITLE 9 OF THE EMERYVILLE MUNIICPAL CODE

Amendment to Section 9-5.202 of Chapter 5 ("Citywide Use and Development Regulations") of Title 9 of the Emeryville Municipal Code are denoted by ~~strikethrough type~~ for language that is deleted and double underlined type for new language.

CHAPTER 5. CITYWIDE USE AND DEVELOPMENT REGULATIONS

ARTICLE 2 MISCELLANEOUS USE REGULATIONS

~~**9-5.207 Medical Marijuana Dispensaries**~~

~~Medical marijuana dispensaries are prohibited pursuant to Section 5.28.05 of Chapter 28 of Title 5.~~

SECTION SEVEN. CEQA DETERMINATION

The City Council finds and determines that this Ordinance is City Council hereby finds that this amendment to the Planning Regulations is exempt from environmental review under the "general rule" at Section 15061(b)(3) of the State California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that the proposed amendment to the Planning Regulations may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed Standards for Personal Cultivation would address any potential impacts of this accessory use; and be it further

SECTION EIGHT. 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.

SECTION NINE. CODIFICATION

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

SECTION TEN. 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, March 21, 2017, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday April 4, 2017 by the following vote:

AYES:	**5**	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	**0**	
ABSTAIN:	**0**	
ABSENT:	**0**	

Scott Donahue
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael Guina
CITY ATTORNEY