ORDINANCE NO. 20-_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AMENDING ARTICLE 2 OF CHAPTER 3 AND ARTICLE 22 OF CHAPTER 5 OF THE PLANNING REGULATIONS AT TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE TO ALLOW CANNABIS MANUFACTURING BUSINESSES IN ADDITIONAL ZONING DISTRICTS AND TO ALLOW REDUCED DISTANCES BETWEEN CANNABIS SALES ACTIVITIES AND PARKS, GREENWAYS AND OTHER SENSITIVE USES (CEQA STATUS: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTIONS 15332 AND 15061(B)(3))

WHEREAS, On April 4, 2017, the City Council adopted regulations to allow retail Cannabis Sales and Cannabis Manufacturing facilities in certain areas of the city. A new Article 22 of Chapter 5, entitled "Cannabis Related Activities", was added to the Planning Regulations that permitted cannabis manufacturing and retail store-front businesses for both medicinal and adult use, with a conditional use permit. Under these regulations, retail Cannabis Sales are allowed with a conditional use permit in the Mixed Use with Residential (MUR), Mixed Use with Residential South (MURS), and Mixed Use with Non-Residential (MUN) zoning districts, and may not be located within 250 feet of any public park (including greenways), religious institution, elementary or secondary school, or day care facility. Cannabis Manufacturing is allowed with a conditional use permit in the Mixed Use with Non-Residential (MUN), Office Technology/Doyle Hollis North (OT/OH), Office Technology (OT), Light Industrial (INL), and Heavy Industrial (INH) zoning districts. There are no distance requirements for Cannabis Manufacturing; and

WHEREAS, on April 4, 2017, the City Council adopted an ordinance entitled "Cannabis", codified as Chapter 28 of Title 5 (Public Welfare) of the Municipal Code, which established a process for the Police Department to issue an "Operator's Permit" to a cannabis business, and which subsequently was amended by Ordinance No. 20-004; and

WHEREAS, to facilitate the further growth of the cannabis industry in Emeryville, it is now proposed to modify the Planning Regulations to add flexibility to the distance requirements for retail Cannabis Sales uses, and to expand the range of zoning districts in which Cannabis Manufacturing uses may be located; and

WHEREAS, on April 7, 2020, the City Council directed staff prepare an ordinance to amend the Planning Regulations to (1) allow the distance requirement for retail Cannabis Sales from parks, greenways, and other sensitive uses to be reduced or waived with a conditional use permit, including a finding that the reduced distance will not compromise the public health, safety, or welfare; and (2) to expand the range of zoning districts in which Cannabis Manufacturing uses may be located with a conditional use permit to include the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zoning districts; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on June 25, 2020 and then voted unanimously to approve the proposed amendment and to recommend that the City Council adopt it; and

WHEREAS, the Emeryville City Council held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on September 1, 2020 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, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code**;**

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 allow the distance requirement for retail Cannabis Sales from parks, greenways, and other sensitive uses to be reduced or waived with a conditional use permit, including a finding that the reduced distance will not compromise the public health, safety, or welfare; and to expand the range of zoning districts in which Cannabis Manufacturing uses may be located with a conditional use permit to include the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zoning districts.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.

The City Council hereby makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

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

The proposed amendments to the Planning Regulations to allow cannabis manufacturing in additional zoning districts as well as reduction in setbacks for cannabis sales would be consistent with the following policy of the General Plan:

LU-P-26 Economic Development: "A mix of commercial uses to stimulate the City's fiscal base from downturns in particular markets shall be maintained."

Allowing cannabis manufacturing in additional districts (MUR and MURS) will assist in stimulating the City's fiscal base by bringing additional properties that can accommodate the use, which will bolster the City's economy in this sector. Moreover, Custom Manufacturing, Light Manufacturing, and Small Food Production are allowed with a conditional use permit in the MUR and MURS zones. All of the existing cannabis manufacturers in the City are similar in nature to Light Manufacturing, Custom Manufacturing and/or Small Food Production.

Given the small size of the City, there is limited land available for cannabis sales and any reduction in the buffer from sensitive receptors will require approval from the Planning Commission which will allow compatibility of any particular business with the surrounding area to be assessed on a case-by-case basis and ensure that that public health, safety and welfare are not compromised.

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

The proposed amendments will benefit the public by adding to the economic base of the city and allowing additional opportunities to establish cannabis retail and manufacturing businesses.

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

This Ordinance is exempt from environmental review under State CEQA Guidelines Section 15332, which applies to infill development projects, and under the "common sense exemption" at Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

(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 TABLE 9-3.202 OF SECTION 9.3.202 OF ARTICLE 2 OF CHAPTER 3 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Table 9-3.202 of Article 2 of Chapter 3 of Title 9 of the Emeryville Municipal Code is hereby amended as follows, with deletions shown in ~~strikeout type~~ and additions shown in double-underlined type.

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

Use Classifications	Base Zones													
	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~~ C	~~X~~ C	C	C	C	C	C	X	X	X	X

SECTION FOUR. AMENDING SECTION 9-5.2207 OF ARTICLE 22 OF CHAPTER 5 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Section 9-5.2207 of Article 22 of Chapter 5 of Title 9 of the Emeryville Municipal Code is hereby amended as follows, with deletions shown in strikeout type and additions shown in double-underlined type.

Section 9-5.2207: Standards

(c) Cannabis Sales shall not be located within two hundred fifty feet (250') of any school, day care facilities, religious institution or public park, unless a conditional use permit is approved with a finding that the reduced distance will not compromise the public health, safety, or welfare. ~~and~~ Cannabis Sales 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.

SECTION FIVE. CEQA DETERMINATION

The proposed amendment is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15332, which applies to infill development projects, and under the "common sense exemption" at 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 SIX. 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 or 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 SEVEN. CODIFICATION.

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

SECTION EIGHT. 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, September 1, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, September 15, 2020, by the following vote:

AYES:		
NOES:		
ABSTAIN:		
ABSENT:		

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY