

ORDINANCE NO. 21-002

An Ordinance Of The City Council Of The City Of Emeryville Amending Section 5-28.06(d) Of The Emeryville Municipal Code, “Cannabis, Review of Applications – Appeal of Disapprovals and Suspensions” (CEQA Determination Exempt Pursuant To CEQA Guideline 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 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 that properties that can accommodate a lawful cannabis business do so within the framework of MAUCRSA and is adopted pursuant to the 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. PURPOSE AND INTENT

The COVID-19 Pandemic is a well-recognized global pandemic that requires implementation of shelter-in-place orders and social distancing requirements to prevent the transmission of COVID-19. Accordingly, the COVID-19 pandemic has impacted the City’s most important revenue sources, including retail sales tax, transient occupancy tax (“TOT”), and business tax, resulting in a decline in revenues of \$10.4 million for Fiscal Year 2020-2021 as compared to Fiscal Year 2018-2019 revenues¹. Sales tax declined by 15%, TOT by 85% and business tax by 27%. Cannabis businesses have paid over \$729,000 in cannabis business taxes to the City from the initiation of the tax in the second quarter of 2019 through the third quarter of 2020 and appear to have been relatively resilient to the pandemic. Cannabis business taxes from same-store sales (i.e. businesses that were operating in both comparative periods) *increased* by 39% comparing the third quarter of 2019 with the third quarter of 2020. Growth of the cannabis business tax base could diversify the City’s revenue sources and help the City recover from the fiscal impacts of the pandemic. Consequently, the purpose of this Ordinance is to ensure that properties that have received approval for cannabis operations are utilized.

¹ Staff Report to City Council “Budget Strategies; Fiscal Year 2020-2021 and Beyond” dated September 15, 2020. Presented during City Council Study Session September 15, 2020.

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Monitoring non-utilized permits burdens existing City resources while yielding no benefit to the general welfare.

SECTION TWO. AMENDING EMERYVILLE MUNICIPAL CODE SECTION 5-28.06(d)

Section 5-28.06(d) of the Emeryville Municipal Code is hereby amended as follows. Additions are in double underline text. Those portions not specifically amended remain unchanged.

(9) Without good cause, the cannabis business has not engaged in a commercially reasonable level of lawful sales of cannabis or cannabis product at the permitted location of the cannabis business for any continuous period of 30 days or longer. For the purposes of this section, “Commercially reasonable level of lawful sales” means a level of lawful sales reasonably expected to result in at least \$25,000 in gross receipts to the business over the permit term.

SECTION THREE. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to 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 adoption of this Ordinance may have a significant effect on the environment.

SECTION FOUR. 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 FIVE. 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 SIX. CODIFICATION

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

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This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, March 16, 2021, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, April 6, 2021.

AYES:	<u>4</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	
RECUSED:	<u>1</u>	Council Member Medina

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY