

ORDINANCE NO. 1794

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA HABRA, COUNTY OF ORANGE, CALIFORNIA, APPROVING ZONE CHANGE 18-04 MODIFYING LA HABRA MUNICIPAL CODE TITLE 18 (ZONING), CHAPTER 18.22 (“COMMERCIAL CANNABIS ACTIVITY”) TO ALLOW FOR CANNABIS TESTING LABORATORIES.

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the “CUA”), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the “MMPA”), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA) formerly known as (the Medical Marijuana Regulation and Safety Act or MMRSA), effective January 1, 2016, which established a state licensing system for medical marijuana cultivation, manufacturing, testing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, testing, dispensing, and delivery within their jurisdictions. Under the MCRSA, cities and counties may continue to regulate and/or prohibit medical marijuana cultivation, manufacturing, dispensing, and delivery, consistent with their respective police powers, in which case the new law would not allow or permit these activities within the cities and counties where such activities are not otherwise permitted; and

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21 also modified language in Health & Safety Code section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: “Exemption from the requirements of this

section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.”; and

WHEREAS, on November 8, 2016, the electorate of the State of California approved Proposition 64 (“Prop 64”) which enacted the Adult Use of Marijuana Act (“AUMA”), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and will expressly allow local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, on June 27, 2017, the Governor approved Senate Bill 94 which combined the regulatory schemes for MMRSA and AUMA into a single, comprehensive regulatory scheme known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”),

WHEREAS, notwithstanding the CUA, the MMPA, MMRSA, and MAUCRSA as amended, marijuana remains a schedule I substance pursuant to California Health & Safety Code § 11054 (d) (13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c) (10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers’ Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal.4th 729 (2013); and

WHEREAS, the City of La Habra on April 2, 2018 adopted an Ordinance repealing Section 18.08.140 (Cultivation of Marijuana Prohibited) of Chapter 18.08 (General Regulations) of Title 18 (Zoning) and adding Chapter 18.22 (Commercial Cannabis Activity) to Title 18 (Zoning) relating to commercial cannabis activities; and,

WHEREAS, the City of La Habra (“**City**”) wishes to amend provisions of Chapter 18.22 (Commercial Cannabis Activity) of Title 18 (Zoning Code) to allow for the establishment of Cannabis Testing Laboratories consistent with MAUCRSA; and,

WHEREAS, it is the purpose and intent of the City to regulate the Cannabis Testing Laboratories within the City in a manner that is consistent with California law and promotes the health, safety, and general welfare of the residents and businesses within

the City, while limiting any negative impacts and while continuing to prohibit all other types of commercial cannabis activities; and,

WHEREAS, the City desires to reduce the illegal market for Cannabis while minimizing the chances of social harm and creating jobs and tax revenue for the City; and,

WHEREAS, nothing in this Ordinance No. 1794 (this “**Ordinance**”) shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under California state law, as amended, except to the extent otherwise specifically set forth; and,

WHEREAS, the Planning Commission held a duly noticed public hearing on August 27, 2018 to consider Zone Change 18-04 modifying Chapter 18.22 (“Commercial Cannabis Activity”) of the La Habra Municipal Code to allow for Cannabis Testing Laboratories. The Planning Commission after considering all the written and oral evidence offered including the staff report and all attachments, recommended by a 5-0 vote that the City Council approve Zone Change 18-04; and,

WHEREAS, the City Council of the City of La Habra, pursuant to the provisions of the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LA HABRA DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. The following sections of Chapter 18.22 (“Commercial Cannabis Activity”) of the La Habra Municipal Code are hereby amended as follows:

- 18.22.020. Definitions. The following definitions apply to this chapter:
1. “Adult Use Cannabis” means the non-medical use of cannabis by adults of age 21 and over as permitted by MAUCRSA and other applicable State and City laws.
 2. “Applicant” means a person, partnership, entity, collective or organization that applies for a permit to engage in commercial cannabis activity under this chapter.
 3. “Business and Professions Code” means the California Business and Professions code, as amended from time to time.
 4. “Cannabis” shall have the same meaning as in Section 26001 of the Business and Professions Code.

5. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products between those persons or entities holding commercial cannabis licenses.
6. "Cannabis Distribution Facility" means the designated structure and property specified in the application that is owned, leased or otherwise held under the control of the Distribution Permittee where cannabis distribution is conducted.
7. "Cannabis Permittee" means a person who holds a Cannabis Permit issued by the City of La Habra and the State of California; and shall be deemed the "operator" as that term is used herein.
8. "Cannabis Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the City Permittee where the Commercial Cannabis Activity will be or is conducted. The premises shall be a contiguous area.
9. "Cannabis Product" shall have the same meaning as in Section 11018.1 of the Health and Safety Code.
10. "Cannabis review board" means the City Manager, Director of Community and Economic Development, Police Chief, Finance Director, and Director of Public Works, or their respective designees, who shall review the credentials of businesses wishing to establish Commercial Cannabis Activities within the City of La Habra.
11. "Caregiver" or "primary caregiver" shall have the same definition as that set forth in California Health and Safety Code Section 11362.7(d) and (e).
12. "City Code" means the City of La Habra Municipal Code.
13. "City Permit" means a permit issued by the City, in accordance with this Chapter and State Law, authorizing participation in a Commercial Cannabis Activity.
14. "Commercial Cannabis Activity" means cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of marijuana and marijuana products, including medical and non-medical marijuana, non-medical cannabis products and medical cannabis products within the meaning of California [Business and Professions Code](#) Sections 26001(i) and 26001(ai) .
15. "Commercial Cannabis Business" means a person, partnership, entity, corporation, company or other organization that conducts commercial cannabis activity.
16. "Commercial Cannabis Facility" means a building, site, property, or parcel where commercial cannabis activity takes place.
17. "Conditional Use Permit" means a Conditional Use Permit granted by the Planning Commission in accordance with La Habra Municipal Code Chapter 18.66 with appropriate conditions to mitigate impacts from the Commercial Cannabis Activity and subject to a Development Agreement between the City and Cannabis Permittee. The Cannabis Conditional Use Permit is not transferrable. Should complaints be received regarding the business operation, the Conditional Use Permit may be scheduled for reconsideration at which time the Planning Commission, during a public hearing, may reapprove, approve

with additional conditions, or revoke the permit per La Habra Municipal Code Chapter 18.66.

18. "Cultivation" shall mean any activity involving the germinating, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Indoor cultivation of marijuana for personal use by persons twenty-one years of age or older on the grounds of a private residence is permitted to the extent allowed by state law (Health and Safety Code Section 11362.1-11362.2). All cultivation of marijuana outdoors within the city of La Habra is prohibited.
19. "Delivery" shall have the same definition as set forth in California Business and Professions Code Section 26001(i). "Delivery" shall not include transportation of marijuana or marijuana products by a licensed transporter traveling through the city public roads to and from locations outside of the city where marijuana-related activities or uses are permitted.
20. "Director" means the Director of Community and Economic Development for the City of La Habra.
21. "Dispensary" shall mean any location where marijuana or devices for the use of marijuana are offered, either individually, or in combination, and includes retail sales. "Dispensary" includes delivery services, mobile dispensing and distribution.
22. "Dispensing" shall mean any activity involving the provision of marijuana for any purpose.
23. "Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between State Licensees, including any City Permittees who are State Licensees.
24. "Distribution Permit" means a City Permit for Distribution in accordance with the terms and conditions of a Cannabis Conditional Use Permit and the conditions of approval for the applicable City Permit issued to such Distribution Permittee. Such Permits shall be associated with State License Type 11 or such other Distribution license types created by the State.
25. "Distribution Permittee" means a Person that has been issued a Distribution Permit by the City pursuant to the terms and conditions of this Chapter; and shall be deemed the "operator" as that term is used herein.
26. "Fully Enclosed and Secure Structure" means a space within a building structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secured against unauthorized entry and provides complete visual screening and which is accessible only through one or more lockable doors and is inaccessible to minors or other barriers that are sufficient to prevent unauthorized access and entry.
27. "Gross Receipts" means the total amount of the sales of a City Permittee, valued in money, whether paid in money or otherwise, without any deduction for the cost of materials used, any costs of transportation of the City Permittee, or any other expenses.
28. "Health and Safety Code" means the California Health and Safety Code, as amended from time to time.
29. "Manufacturer" shall mean a person that conducts the production, preparation, propagation, or compounding of marijuana, either directly or indirectly or by

extraction methods, or independently by means of chemical synthesis or by any combination thereof, and includes packaging, repackaging, labeling, and/or relabeling.

30. "Marijuana" shall have the same definition as that set forth in California Health and Safety Code Section 11018. "Marijuana" shall include: "cannabis" as defined in California Business and Professions Code Section 26001(f); "cannabis concentrate" as defined in California Business and Professions Code Section 26001(h); "edible cannabis product" as defined in California Business and Professions Code Section 26001(t); cannabis that is manufactured as defined in California Business and Professions Code Section 26001(ag); "medical cannabis," "medical cannabis product," or "cannabis product" as defined in California Business and Professions Code Section 26001;
31. "Marijuana businesses" shall mean marijuana businesses for any purpose (medical or non-medical) including dispensaries, cooperatives, cultivation, manufacturing, testing facilities, transporting, or distributing; all of which are prohibited from being established or operating within the city, except that licensed marijuana transporters are permitted to pass through the city on public roads as mandated by Business and Professions Code Section 26080.
32. "Person" shall mean any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer and/or salesperson.
33. "Permit Zone" means, with respect to a Person holding a City Permit, the zones or portions of the City where such City Permit type is permitted to operate. Such Permit Zones may be amended from time-to-time by a majority vote of the City Council. To the extent not otherwise specified in this definition, a City Permittee shall be able to operate in any portion of the City, which complies with the zoning, radius and other requirements of this chapter.
34. "Qualified Cannabis Applicant" means a person who applies for a permit to conduct commercial cannabis activity under this chapter and whose application complies with this Chapter and has not been deemed disqualified.
35. "Qualified patient" or "qualifying patient" shall mean qualified patient and persons with identification cards as those terms are defined by the Health and Safety Code Section 11362.7. This prohibition does not apply or prohibit qualified patients and persons with identification cards to cultivate indoors, possess, and use marijuana for their own personal medical purposes only, as permitted by state law. Nothing herein shall be construed to authorize qualified patients to engage in the collective cultivation of marijuana as described by Health and Safety Code Section 11362.775, nor are they permitted to cultivate marijuana above limits established by state law and guidelines for their own personal use.
36. "Sampler" is a testing laboratory employee who collects samples of cannabis goods for testing.
37. "State" means the State of California.
38. "State Law" means all laws of the State, including all rules and regulations adopted by State agencies and State regulatory entities.

39. "State License" means a State License issued under Division 10, commencing with Section 26000, of the Business and Professions Code, and includes both an A-License and M-Licenses as well as a testing laboratory License.
 40. "State Licensee" means a Person that has been issued a State License.
 41. "Testing Laboratory" is an entity that is licensed by the State to conduct sampling and analyses of medical and or adult use cannabis goods and includes the personnel, specialized apparatus, and instruments used to analyze medical and or adult use cannabis goods. This definition does not include the cloning, planting or cultivation of cannabis plants or the direct sales, distribution, delivery, or dispensing of cannabis and cannabis products to the public.
 42. "Testing site" shall mean any facility, entity, or site in the city that offers or performs tests of marijuana.
 43. "Transport" or "Transportation" means the transfer of Cannabis or Cannabis Products between one or more Cannabis Permittee.
 44. "Volatile Solvent" means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.
- A. Subsection 2 is added to Subdivision (D) of Section 18.22.030 Commercial Cannabis Activity as follows:
2. Cannabis testing laboratories within M-1, M-1(PUD) and PC-I zones subject to the provisions within this Chapter, State requirements and the following standards:
 - a. The business owner, operator, and employees are prohibited from holding a license for any other cannabis activity while owning, operating or being employed by a testing laboratory. No individual shall be employed by a testing laboratory that is also employed by any other cannabis licensee other than a testing laboratory license.
 - b. The state licensee must submit proof of ISO (International Organization for Standardization) accreditation to the City prior to commencing operations.
 - c. Only samplers trained in accordance with established industry standards employed by the licensed testing laboratory may obtain samples for the laboratory.
 - d. The state licensee must follow established chain-of-custody protocols consistent with industry standards to ensure that sample integrity is such that it may be maintained from the point of collection, receipt of the samples at the laboratory, testing, and destruction.
 - e. Upon completion of testing, documentation of samples being incinerated shall be maintained.
 - f. The state licensee must submit to the City a copy of its Standard Operating Procedures and shall maintain a copy of these procedures on site and available to City inspection at all times.

- g. The state licensee shall conduct an internal audit at least once per year or according to the ISO accrediting body's requirements, whichever is more frequent. The internal audit must cover everything required to be covered by ISO 17025 internal-audit standards.
- h. All testing laboratory records must be kept for a minimum of 7 years.
- i. A testing laboratory cannot operate on a parcel that contains another commercial cannabis facility unless there is at least one commercial unit of separation between the testing laboratory and another commercial cannabis facility, except that a testing laboratory may be located adjacent to another testing laboratory on the same parcel.

SECTION 4. Recognizing that there is a potential conflict between Federal and State law, it is the City Council's intention that this Ordinance shall be deemed to comply with applicable State Law.

SECTION 5. The City Council determines that it is in the best interest of the residents of the City of La Habra to allow certain Commercial Cannabis Activities in compliance with applicable State Law, including MAUCRSA, be established and operated as permitted uses within certain areas of the City subject to the regulations and restrictions provided in this Ordinance. It is the City Council's intention that nothing in this Ordinance shall be construed to:

- 1. Allow a Person to engage in conduct that endangers others or causes a public nuisance.
- 2. Allow any activity relating to Cannabis that is otherwise not permitted by the City and/or under State law.

SECTION 6. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations, in that the Ordinance alone does not have the potential for causing a significant effect on the environment. Further, any specific operation site shall be reviewed for possible environmental impacts in accordance with CEQA.

SECTION 7. If any section or provision of this Ordinance is for any reason held to be invalid, unconstitutional, illegal, or unenforceable by any court of competent jurisdiction, or contravened due to any preemptive legislation, then such section or provision shall be severed and shall be inoperative, and the remainder of this Ordinance shall remain in full force and effect.

SECTION 8. By regulating Cannabis Testing Laboratories, the City is undertaking action to preserve the general welfare through implementation of MAUCRSA. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to liability in money damages to any Person who claims that such breach proximately caused injury. To the fullest extent permitted by law,

the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any permitted Cannabis operation. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Ordinance shall not become a personal liability of any public officer or employee of the City. Nothing in this Ordinance shall be deemed or considered in any respects to constitute authorization to violate any law.

SECTION 9. The City Council held a duly noticed public hearing on September 17, 2018 to consider the request for Zone Change 18-04 modifying Chapter 18.22 (“Commercial Cannabis Activity”) of the La Habra Municipal Code to allow for Cannabis Testing Laboratories. The City Council after considering all the written and oral evidence offered including the staff report and all attachments along with the Planning Commission’s recommendation, approves the code amendments.

SECTION 10: This ordinance shall be effective 30 days after its final adoption.

SECTION 11: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2018.

Tim Shaw, Mayor

ATTEST:

Tamara D. Mason, MMC, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF LA HABRA)

I, Tamara D. Mason, City Clerk of the City of La Habra, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1794 introduced at a regular meeting of the City Council of the City of La Habra held on the 17th day of September, 2018, and was thereafter adopted at a regular meeting held on the 1st day of October, 2018, by the following vote:

AYES: COUNCILMEMBERS: Gomez, Beamish, Espinoza, Blazey, Shaw
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of La Habra this 1st day of October, 2018.

Tamara D. Mason, MMC, City Clerk