

ORDINANCE NO. 17-0030-U

AN INTERIM ORDINANCE OF THE CITY OF MANHATTAN BEACH EXTENDING INTERIM ORDINANCE NO. 17-0025-U AMENDING LOCAL COASTAL PROGRAM TITLE A TO ADD CHAPTER A.82 PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY IN THE COASTAL ZONE AND ALLOWING LIMITED INDOOR CANNABIS CULTIVATION CONSISTENT WITH STATE LAW, AND DELETING LOCAL COASTAL PROGRAM SECTION A.60.160, AND DECLARING THE URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Extension of Interim Ordinance No. 17-0025-U. Ordinance No. 17-0025-U, adopted on October 17, 2017, prohibits all commercial cannabis activity in the Coastal zone and allows limited indoor cannabis cultivation consistent with State law is hereby extended in full force and effect for 10 months and 15 days to and including October 16, 2018. Ordinance No. 17-0025-U is set to expire on December 1, 2017, and is hereby extended in full force and effect for 10 months and 15 days to and including October 16, 2018.

SECTION 2. The proposed Amendments are consistent with the following Local Coastal Program Policy:

II. Coastal Locating and Planning New Development Policy - Policy II.1: Control Development within the Manhattan Beach coastal zone.

SECTION 3. The proposed Local Coastal Program Amendments have been prepared in accordance with all applicable provisions of the California Government Code.

SECTION 4. Term. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Sections 65858 and 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption. This Ordinance shall expire, and the use permit requirement required hereby shall terminate, on October 16, 2018.

SECTION 5. Alleviation Measures Report. In accordance with California Government Code Section 65858(d), the City Council has issued a written report describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 17-0025-U.

SECTION 6. Section A.60.160 (Medical Marijuana Dispensaries) of Chapter A.60 (Site Regulations – All Districts) of Title A (Planning and Zoning) is hereby deleted in its entirety.

SECTION 7. Chapter A.82 is hereby added to Title A (Planning and Zoning) to read as follows:

“Chapter A.82 CANNABIS

Section A.82.010 Definitions.

Section A.82.020 Prohibitions.

Section A.82.030 Exceptions.

Section A.82.040 Violation.

A.82.010 Definitions.

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

A. “Cannabis” means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis, and any product containing cannabis. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes.

“Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code Section 11018.5, as the same may be amended from time to time.

B. “Cannabis accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. “Cannabis products” means 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 concentrated cannabis and other ingredients.

D. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and cannabis products, for medical, non-medical or any other purpose, and includes the activities of any business licensed by the State or other government entity under California Business and Professions Code Division 10, or any other provision of State law that regulates the licensing of cannabis businesses. Commercial cannabis activity does not include any activities exempt from

licensure requirements pursuant to California Business and Professions Code Division 10, as amended from time to time.

E. “Concentrated cannabis” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform.

H. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under California Business and Professions Code Division 10, as the same may be amended from time to time.

I. “Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete solid roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

J. “Indoors” means within a fully enclosed and secure structure.

K. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

L. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as codified in California Business and Professions Code Division 10, as the same may be amended from time to time.

M. “Outdoors” means any location that is not within a fully enclosed and secure structure.

N. “Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, collective, cooperative, club, society, organization, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

O. “Private residence” means a house, an apartment unit, a condominium unit, a mobile home, or other similar dwelling, that is lawfully used as a residence.

A.82.020 Prohibitions.

A. Commercial cannabis activity, whether or not for profit, is not a permitted use anywhere in the city. The city shall not approve any application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that

allows for commercial cannabis activity. This section shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time.

B. It shall be unlawful for any person to own, manage, establish, conduct, or operate, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any commercial cannabis activity in the city.

C. To the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products to or from any location in the city are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

D. All outdoor cannabis cultivation is prohibited in the city. Indoor cannabis cultivation is prohibited except as specified in Section A.82.030(A)(4).

A.82.030 Exceptions.

A. To the extent that the following activities are permitted by State law, nothing in this chapter shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever; or

4. Engaging in the indoor cultivation of six or fewer live cannabis plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by California Health and Safety Code Sections 11362.1 and 11362.2, as the same may be amended from time to time.

B. This chapter shall also not prohibit any commercial cannabis activity that the city is required by law to permit within its jurisdiction pursuant to state law.

A.82.040 Violation.

Violations of this chapter are subject to the penalty provisions set forth in Municipal Code Chapters 1.04 and 1.06. At the discretion of the City Prosecutor, a

violation of this chapter may be prosecuted as an infraction or misdemeanor. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Municipal Code Chapter 1.04, this chapter does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 *et seq.* or Section 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated in Municipal Code Chapter 1.04 and established by the City Council pursuant to Municipal Code Chapter 1.06, and any penalties set forth in state law, the maximum penalties allowable under state law shall govern."

SECTION 8. FINDINGS. The City Council finds and determines as follows:

On June 27, 2017, the Governor signed into law Senate Bill 94 creating a single regulatory scheme for both medical and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the Medical Cannabis Regulation and Safety Act ("MCRSA") and the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") that granted local jurisdictions control over whether commercial cannabis activity can occur in a particular jurisdiction. However, the MAUCRSA eliminates the dual licensing scheme established by the MCRSA whereby an applicant was required to obtain both a state and local license to operate a cannabis business. Instead, the MAUCRSA permits state licensing authorities to issue licenses to cannabis businesses without first obtaining approval from local jurisdictions if local jurisdictions do not retain local control by adopting an ordinance prior to January 1, 2018. The relevant state licensing authority must notify the City upon receipt of an application to operate a cannabis business in the City, at which point the City must then notify the State licensing authority whether the applicant is compliant with local ordinances. The MAUCRSA requires that a State licensing authority begin issuing licenses to cannabis businesses beginning January 1, 2018.

The City Council approved the Local Coastal Program Amendments contained herein to prohibit commercial cannabis and allow limited indoor cannabis cultivation, and staff is in the process of preparing and transmitting the Local Coastal Program Amendments to the California Coastal Commission for certification. Based upon its current workload, the California Coastal Commission may not certify these Amendments prior to January 1, 2018. The California Coastal Commission's time to review and certify the Local Coastal Program Amendments will most likely extend beyond the January 1, 2018 deadline for State licensing authorities to begin issuing licenses to cannabis businesses, causing confusion and ambiguity regarding the applicability of provisions of the City's cannabis regulations and exposing the City to the possibility that the state would issue a license that would be in conflict with the City's ordinances.

Based upon the foregoing, the City Council hereby finds that there is a current and immediate threat to the public health, safety, or welfare if new commercial cannabis activities were established in the City pursuant to state issued licenses that are contrary to the City's ordinances, and that the approval of any entitlement for or authorization of such uses would result in that threat to public health, safety, or welfare. Due to the foregoing circumstances, it is necessary for the preservation of the public health, safety, and welfare for this Ordinance to be extended and take effect immediately. This

Ordinance is an urgency ordinance for the immediate preservation of the public peace, health, and safety within the meaning of Government Code Sections 65858 and 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.

SECTION 9. CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION.

The City Council hereby finds that this interim zoning ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the “CEQA Guidelines”). It can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the regulations established hereby, may have a significant effect on the environment, and the action taken herein is not a “project” within the meaning of CEQA.

SECTION 10. INTERNAL CONSISTENCY. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

SECTION 11. SEVERABILITY. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or their application and, to this end, the provisions of this Ordinance are severable.

SECTION 12. SAVINGS CLAUSE. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall constitute a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinance.

PASSED, APPROVED AND ADOPTED by the Manhattan Beach City Council on November 21, 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

DAVID LESSER
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney