

PLANNING COMMISSION AGENDA REPORT
Development Services Department

Agenda Item:	8B
Project Name:	Cannabis Amendment
Request:	Public hearing to consider repealing Encinitas Municipal Code Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) and amending Title 30 (Zoning) of the Encinitas Municipal Code, and the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-by-the-Sea Specific Plans, and the Local Coastal Program, regulating Cannabis activity in the City of Encinitas.
Discretionary Actions:	Zoning Code Amendment (ZA) Specific Plan Amendment (SPA) Local Coastal Program Amendment (LCPA)
CEQA Recommendation:	EXEMPT
STAFF RECOMMENDATION:	RECOMMEND APPROVAL
Project Number:	PLCY-004422-2021 (ZA/SPA/LCPA – Cannabis Amendment)
Location:	Citywide
Community:	Citywide
APN:	Citywide
Applicant:	City of Encinitas
Project Planner:	Evan Jedynak - Associate Planner ejedynak@encinitasca.gov
Commission Meeting Date:	May 20, 2021
City Council Hearing Required?	Yes
Report Approval:	Jennifer Gates, Principal Planner Roy Sapa'u, Assistant Director
Recommended Action:	Adopt Resolution No. PC-2021-XX (Attachment PC-1) to recommend City Council adopt Draft Ordinance No. 2021-04 to repeal Encinitas Municipal Code Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) and amend Title 30 - Zoning of the Encinitas Municipal Code, the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-by-the-Sea Specific Plans, and the Local Coastal Program, regulating cannabis activity.

SUMMARY AND KEY CONSIDERATIONS:

The proposed Ordinance No. 2021-04 (attached hereto as part of Attachment PC-1) repeals Encinitas Municipal Code Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) in its entirety, and amends Title 30 - Zoning of the Encinitas Municipal Code (EMC), the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-by-the-Sea Specific Plans, and the Local Coastal Program. The draft Ordinance proposes authorizing commercial cannabis activities involving retail sales, cultivation, manufacturing, distribution, kitchens, and personal use cultivation in specific zones, subject to certain regulations and restrictions consistent with Ordinance No. 2020-18 that was passed, approved, and adopted by voter initiative of the people of the City of Encinitas at the Regular Municipal Election on November 3, 2020, creating EMC Chapter 9.25 (Cannabis Activity). The Planning Commission is being asked to consider the proposed amendments and make a recommendation to the City Council. The City Council will consider the amendments at a separately noticed public hearing.

BACKGROUND:

In the United States, the use and possession of cannabis is illegal under federal law for any purpose under the Controlled Substances Act of 1970. However, many states, including California, have adopted policies legalizing the medical and recreational use of cannabis. The medical use of cannabis in California became legal in 1996, when the voters passed Proposition 215, the Compassionate Use Act, which allowed the use of cannabis for medical purposes when recommended by a physician and excluded the patient and primary caregiver from criminal prosecution.

Building on this legislation, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), in 2003. The MMPA established requirements for the issuance of voluntary identification cards, provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical cannabis, prohibited the distribution of cannabis for profit, and required the Attorney General to issue guidelines for the security of medical cannabis. In 2005, the California Board of Equalization began issuing seller's permits for sales of medical cannabis. In 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, comprising the Medical Cannabis Regulation and Safety Act (MCRSA), which established a comprehensive regulatory framework for the production, transportation, and sale of medical cannabis.

In 2016, with the passage of Proposition 64, the Adult Use of Marijuana Act, recreational cannabis became legal in California. This law allows for the adult use of both medical and recreational cannabis and further clarifies state regulatory requirements. Proposition 64 also gives cities the ability to regulate commercial cannabis activities.

At the local level, the Encinitas City Council directed the formation of a Council Subcommittee to explore cannabis-related uses on February 15, 2017. The subcommittee conducted three publicly noticed meetings in 2017, and then provided a recommendation for staff to prepare an ordinance banning all cannabis uses and activities to the extent authorized by current state law. Subsequently, on November 15, 2017, the City Council adopted Ordinance No. 2017-16, adding

Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) to the Encinitas Municipal Code to prohibit all commercial and personal cannabis-related activities and uses.

In 2020, Measure H was placed on the ballot through a petition by Encinitas voters, and gave residents the opportunity to vote on a change to local regulations to allow certain cannabis-related uses and activities. Measure H, and the associated Ordinance No. 2020-18 (Attachment PC-2), was passed, approved, and adopted on November 3, 2020 at the Regular Municipal Election, creating Encinitas Municipal Code Chapter 9.25 (Cannabis Activity), and effectively allowing cannabis retail sales, cultivation, manufacturing, kitchens, distribution, and personal use cultivation, subject to certain regulations and restrictions. The subject discretionary actions (Zoning Amendment, Specific Plan Amendment, and Local Coastal Program Amendment) are necessary to ensure consistency with the approved Ordinance No. 2020-18 certified by City Council on December 8, 2020. Failure to adopt the subject actions in a timely manner would result in potential exposure to litigation for the City.

This item was originally noticed to be heard by the Planning Commission on April 1, 2021. That meeting was cancelled. A new Notice of Public Hearing and Notice of Availability for Local Coastal Amendment was released for the May 6, 2021 Planning Commission meeting. This item was continued from the May 6, 2021 meeting without being heard to the May 20, 2021 meeting.

DISCUSSION AND ANALYSIS:

Ordinance No. 2020-18 effectively legalizes several cannabis-related uses in certain commercial, industrial, and agricultural zones throughout the City. The Ordinance creates a new EMC Chapter 9.25 that provides a list of chapter-specific definitions, outlines a process for approval, and identifies zoning districts where cannabis-related land uses are permitted. The Ordinance specifies several land use regulations to ensure that adverse impacts to adjacent uses are limited. Retailers must maintain a separation from sensitive uses, which includes schools, parks, and daycare centers. The cultivation of cannabis must occur within a greenhouse or enclosed space. All cannabis businesses must register with the City and show compliance with regulations outlined in the Ordinance prior to being issued a business license and beginning operations, which includes a background check and written permission from the property owner or management. As part of the subject actions, the entirety of the existing Title 9.21 must be repealed.

Ordinance No. 2020-18 identifies six types of land uses related to cannabis activity, including retail, commercial cultivation, industrial hemp, product manufacturing, kitchens, and distribution. Cannabis retailers are permitted in the General Commercial (GC) zone, and in Commercial Mixed Use (D-CM-1 and D-CM-2) zones in the Downtown Encinitas Specific Plan, Commercial Mixed Use (N-CM-1, N-CM-2, and N-CM-3) zones in the North 101 Corridor Specific Plan, Commercial (ER-C) and Mixed Use (ER-MU1 and ER-MU2) zones in the Encinitas Ranch Specific Plan, and General Commercial (C-GC1 and C-GC2) zones in the Cardiff-by-the-Sea Specific Plan. Commercial cannabis cultivation and industrial hemp uses are allowed in Agriculture (AG) zone only. Cannabis product manufacturing and cannabis kitchens are allowed in the Business Park (BP), Light Industrial (LI), and Agriculture (AG) zones. Cannabis distribution sites are permitted in the BP and LI zones.

The land use matrices in Title 30 and the Specific Plans are being updated as depicted in the attached Draft Ordinance in order to be consistent with Ordinance No. 2020-18.

The City cannot begin accepting applications until the Ordinance is adopted by the City Council and approved by the Coastal Commission. The City has hired a consultant, HdL Companies, to facilitate the cannabis business application process after approval of the proposed amendments by the California Coastal Commission.

Next Steps

The Planning Commission's recommendation will be provided to the City Council for their consideration at a subsequent public hearing, which will be noticed separately.

Local Coastal Program Amendment/Notice of Availability Not Applicable

The City's Local Coastal Program (LCP) consists of two parts: 1) Land Use Plan and 2) Implementation Plan. Title 30 of the Municipal Code and the Specific Plans are a component of the LCP Implementation Plan; therefore, any amendments to these documents warrant a Local Coastal Program Amendment (LCPA) subject to review and approval by the California Coastal Commission. An LCPA is included as part of the subject request. A Public Notice of Availability opened a six-week public review period, which started on April 16, 2021, and will conclude on May 28, 2021, and is required to elapse prior to any final action being taken by the City Council on the LCP Amendment. If the City Council approves the LCPA, the proposed LCPA will be submitted to the California Coastal Commission for review and approval. The proposed amendments will not become effective until after formal certification by the California Coastal Commission of the LCPA.

General Plan, Municipal Code and Local Coastal Program Consistency:

The proposed amendments are consistent with the intents and purposes of the General Plan, Specific Plans, and Local Coastal Program. By repealing Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) and implementing Chapter 9.25 (Cannabis Activity), the amendments change the intent of the existing Chapter 9.21 of the Municipal Code in order to allow and regulate cannabis activities consistent with the voter-approved Ordinance No. 2020-18, including changes in allowed land uses. With the exception of Chapter 9.21 of the Municipal Code, the amendments are consistent with the Municipal Code.

Proposition A Not Applicable:

The proposed ordinance would amend the City's zoning regulations to comply with Measure H (Ordinance No. 2020-18) voter approved initiative. Under Proposition A, amendments to land use planning policy documents of the City of Encinitas require a public vote if the amendment is a "major amendment," but do not require a public vote if the amendment is a "regular amendment." A major amendment, in pertinent part, would increase the maximum allowable number of residential units on a parcel or group of parcels. The proposed ordinance modifies current provisions to reasonably regulate cannabis activity, including retail sales, cultivation, manufacturing, distribution, kitchens, and personal use cultivation, and does not modify the allowable number of residential units on any property. Therefore, this ordinance does not constitute a major amendment and Proposition A is not applicable.

In addition, the proposed amendment includes the repealing of EMC Chapter 9.21 and Proposition A considers repealing of any policy document as a "Major Amendment". However,

the vote requirement is satisfied through the approval and passing of the voter initiative Measure H by the voters in November 2020.

ENVIRONMENTAL CONSIDERATIONS:

It has been determined that the proposed Ordinance is not a “project” subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(c). Section 15378(c) states that the term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval. Here, the activity which is being approved are the cannabis-related activities authorized by Ordinance 2020-18, which was adopted by a voter-sponsored initiative and is therefore exempt from CEQA review pursuant to CEQA Guidelines section 15378(b)(3). The proposed amendments are subsequent approvals required to implement Ordinance 2020-18 as written, therefore the amendments do not constitute a separate “project” and do not require CEQA review.

Even if the proposed Ordinance was considered a project subject to CEQA, it would be exempt from CEQA pursuant to Sections 15301 (Class 1, Existing Facilities), 15303 (Class 3, New Construction or Conversion of Small Structures), and 15332 (Class 32, Infill Development Projects) of the CEQA Guidelines because future construction for cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction projects that will also not have a significant effect on the environment.

In addition, the Ordinance is statutorily exempt from CEQA pursuant to California Business and Professions Code Section 26055(h). Section 26055(h) exempts by statute the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

In the future, if the proposed Ordinance is adopted, all cannabis-related business license applications submitted to the City will be subject to CEQA, with the California Bureau of Cannabis Control (BCC) acting as the lead agency. The BCC will determine whether each business license application has the potential to generate significant adverse environmental impacts pursuant to CEQA.

ATTACHMENTS:

Attachment PC-1	PC Draft Resolution
Attachment PC-2	Ordinance No. 2020-18

RESOLUTION NO. PC 2021-XX

A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF ENCINITAS ADOPT DRAFT CITY COUNCIL ORDINANCE NO. 2021-04, TITLED “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, AMENDING TITLES 9 AND 30 OF THE ENCINITAS MUNICIPAL CODE AND THE DOWNTOWN ENCINITAS, NORTH 101 CORRIDOR, ENCINITAS RANCH, AND CARDIFF-BY-THE-SEA SPECIFIC PLANS, AND THE LOCAL COASTAL PLAN RELATING TO CANNABIS ACTIVITY.”

CASE NO. PLCY-004422-2021 (ZA/SPA/LCPA)

WHEREAS, in 1996 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 215, the Compassionate Use Act, that allows the use of cannabis for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined;

WHEREAS, in 2003 the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical cannabis; prohibited the distribution of cannabis for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate cannabis for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical cannabis; and allowed cities to adopt and enforce laws consistent with the MMPA;

WHEREAS, in 2015 the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, comprising the Medical Cannabis Regulation and Safety Act and establishing a comprehensive regulatory framework for the production, transportation, and sale of medical cannabis;

WHEREAS, in 2016 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 64, the Adult Use of Marijuana Act, allowing for the adult use of cannabis and further clarifying state regulatory requirements;

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution;

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution;

WHEREAS, the voters of the City of Encinitas desired that the City exercise its police powers solely to provide for the zoning of retailers, cultivation, product manufacturing, and distribution in such a manner as to limit the impact on the City generally and residential neighborhoods in particular;

WHEREAS, Ordinance No. 2020-18 was adopted by the people of the City of Encinitas at a regular Municipal Election held on November 3, 2020, and election results certified by the Encinitas City Council on December 8, 2020;

WHEREAS, the Municipal Code, the Downtown Encinitas, North 101 Corridor, Encinitas Ranch and Cardiff-by-the-Sea Specific Plans, and Local Coastal Program need to be amended to be consistent with Ordinance No. 2020-18;

WHEREAS, on May 20, 2021, the Encinitas Planning Commission held a duly-noticed public hearing concerning the proposed land use and zoning regulations governing cannabis activity;

WHEREAS, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued, which opened a six-week public review period that ran from April 16, 2021 through May 28, 2021; and

WHEREAS, the Planning Commission finds that the amendments are consistent with the purposes of the General Plan, the purposes of the Municipal Code and applicable Specific Plans, the purposes of the Local Coastal Plan, and other applicable City ordinances.

NOW, THEREFORE, BE IT RESOLVED that the Encinitas Planning Commission hereby RECOMMENDS APPROVAL of City Council draft Ordinance No. 2021-04, attached hereto as Exhibit A, Amending Titles 9 and 30 of the Encinitas Municipal Code and the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-By-The-Sea Specific Plans, and the Local Coastal Plan relating to Cannabis Activity; based on the following Environmental Determination and Findings:

Section 1. California Environmental Quality Act Determination

The Planning Commission, in its independent judgment, recommends that the City Council finds that the proposed amendments are exempt from the California Environmental Quality Act (CEQA) because the proposed Ordinance is not a “project” subject to CEQA pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(c). Section 15378(c) states that the term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval. Here, the activity which is being approved are the cannabis-related activities authorized by Ordinance 2020-18, which was adopted by a voter-sponsored initiative and is therefore exempt from CEQA review pursuant to CEQA Guidelines section 15378(b)(3). The proposed amendments are subsequent approvals required to implement Ordinance 2020-18 as written, therefore the amendments do not constitute a separate “project” and do not require CEQA review.

Even if the proposed Ordinance was considered a project subject to CEQA, it would be exempt from CEQA pursuant to Sections 15301 (Class 1, Existing Facilities), 15303 (Class 3, New Construction or Conversion of Small Structures), and 15332 (Class 32, Infill Development Projects) of the CEQA Guidelines because future construction for cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction projects that will also not have a significant effect on the environment.

In addition, the Ordinance is statutorily exempt from CEQA pursuant to California Business and Professions Code Section 26055(h). Section 26055(h) exempts by statute the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

Section 2. Findings.

The Planning Commission finds that this Ordinance is necessary to comply with Ordinance No. 2020-18 that was passed, approved, and adopted by voter initiative of the people of the City of Encinitas at the Regular Municipal Election on November 3, 2020.

PASSED AND ADOPTED this May 20, 2021, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Bruce Ehlers, Chair

ATTEST:

Roy Sapa'u, Secretary

EXHIBIT A

DRAFT ORDINANCE NO. 2021-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, AMENDING TITLES 9 AND 30 OF THE ENCINITAS MUNICIPAL CODE AND THE DOWNTOWN ENCINITAS, NORTH 101 CORRIDOR, ENCINITAS RANCH, AND CARDIFF-BY-THE-SEA SPECIFIC PLANS, AND THE LOCAL COASTAL PLAN RELATING TO CANNABIS ACTIVITY

WHEREAS, in 1996 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 215, the Compassionate Use Act, that allows the use of cannabis for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined;

WHEREAS, in 2003 the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical cannabis; prohibited the distribution of cannabis for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate cannabis for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical cannabis; and allowed cities to adopt and enforce laws consistent with the MMPA;

WHEREAS, in 2015 the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, comprising the Medical Cannabis Regulation and Safety Act and establishing a comprehensive regulatory framework for the production, transportation, and sale of medical cannabis;

WHEREAS, in 2016 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 64, the Adult Use of Marijuana Act, allowing for the adult use of cannabis and further clarifying state regulatory requirements;

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution;

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution;

WHEREAS, the voters of the City of Encinitas desired that the City exercise its police powers solely to provide for the zoning of retailers, cultivation, product manufacturing, and distribution in such a manner as to limit the impact on the City generally and residential neighborhoods in particular;

WHEREAS, Ordinance No. 2020-18 was adopted by the people of the City of Encinitas at a regular Municipal Election held on November 3, 2020, and election results certified by the Encinitas City Council on December 8, 2020;

WHEREAS, the Municipal Code, Downtown Encinitas, North 101 Corridor, Encinitas Ranch and Cardiff-by-the-Sea Specific Plans, and Local Coastal Program need to be amended to be consistent with Ordinance No. 2020-18;

WHEREAS, on May 20, 2021, the Encinitas Planning Commission held a duly-noticed public hearing concerning the proposed land use and zoning regulations governing cannabis activity;

WHEREAS, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued, which opened a six-week public review period that ran from April 16, 2021 through May 28, 2021;

WHEREAS, the Planning Commission finds that the amendments are consistent with the purposes of the General Plan, the purposes of the Municipal Code and applicable Specific Plans, the purposes of the Local Coastal Plan, and other applicable City ordinances;

WHEREAS, the Planning Commission found the proposed regulations to be exempt from the California Environmental Quality Act (CEQA) because the proposed Ordinance is not a “project” subject to CEQA pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(c). Section 15378(c) states that the term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval. Here, the activity which is being approved are the cannabis-related activities authorized by Ordinance 2020-18, which was adopted by a voter-sponsored initiative and is therefore exempt from CEQA review pursuant to CEQA Guidelines section 15378(b)(3). The proposed amendments are subsequent approvals required to implement Ordinance 2020-18 as written, therefore the amendments do not constitute a separate “project” and do not require CEQA review.

Even if the proposed Ordinance was considered a project subject to CEQA, it would be exempt from CEQA pursuant to Sections 15301 (Class 1, Existing Facilities), 15303 (Class 3, New Construction or Conversion of Small Structures), and 15332 (Class 32, Infill Development Projects) of the CEQA Guidelines because future construction for cannabis businesses will largely be within existing buildings for interior tenant improvements or involve minor new construction projects that will also not have a significant effect on the environment.

In addition, the Ordinance is statutorily exempt from CEQA pursuant to California Business and Professions Code Section 26055(h). Section 26055(h) exempts by statute the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity;

WHEREAS, on [MONTH, DAY], 2021, the City Council conducted a duly-noticed public hearing for the purpose of considering amendments to Titles 9 and 30 of the EMC, and amendments to the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-by-the-Sea Specific Plans, and amendments to the Local Coastal Plan.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION 1: The foregoing recitals are true and correct.

SECTION 2: Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) of the Encinitas Municipal Code is hereby repealed in its entirety.

SECTION 3: Chapter 30.09 (Zoning Use Matrix) of the Encinitas Municipal Code is hereby amended as shown in Exhibit 1, attached hereto and incorporated herein by this reference.

SECTION 4: The Downtown Encinitas Specific Plan is hereby amended as shown in Exhibit 2, attached hereto and incorporated herein by this reference.

SECTION 5: The North 101 Corridor Specific Plan is hereby amended as shown in Exhibit 3, attached hereto and incorporated herein by this reference.

SECTION 6: The Encinitas Ranch Specific Plan is hereby amended as shown in Exhibit 4, attached hereto and incorporated herein by this reference.

SECTION 7: The Cardiff-by-the-Sea Specific Plan is hereby amended as shown in Exhibit 5, attached hereto and incorporated herein by this reference.

SECTION 8: This Ordinance is consistent with the intents and purposes of the General Plan, Municipal Code, Specific Plans, and Local Coastal Program. By repealing Encinitas Municipal Code (EMC) Chapter 9.21 (Marijuana and Marijuana-Related Activities and Uses) and implementing EMC Chapter 9.25 (Cannabis Activity), the amendments change the intent of the existing EMC Chapter 9.21 in order to allow and regulate cannabis activities consistent with the voter-approved Ordinance No. 2020-18, including changes in allowed land uses. With the exception of EMC Chapter 9.21, the amendments are consistent with the Municipal Code.

SECTION 9: It has been determined that the proposed Ordinance is not a “project” subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(c) and/or is exempt from CEQA pursuant to Sections 15060(c)(3), 15301, 15303, and 15332 of the CEQA Guidelines. In addition, the Ordinance is statutorily exempt from CEQA pursuant to California Business and Professions Code Section 26055(h).

SECTION 10: This Ordinance is consistent with the adopted Local Coastal Program in that the amendments will not interfere with the protection and maintenance of the overall quality of the coastal zone environment.

SECTION 11: This Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Director of Development Services is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for its review and adoption.

SECTION 12: If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 13: This Ordinance shall take effect and be in force on the date of adoption by the California Coastal Commission, regardless of whether an area is or is not within the Coastal Zone, but not sooner than thirty (30) days after its passage by the City Council. The City Clerk of the City of Encinitas is hereby authorized to use summary publication procedures pursuant to Government Code section 36933 utilizing the Coast News, a newspaper of general circulation designated for legal notices publication in the City of Encinitas.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California, held on this _____ day of _____, 2021; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the _____ day of _____, 2021, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Catherine S. Blakespear, Mayor

ATTEST:
Kathy Hollywood, City Clerk

APPROVED AS TO FORM:
Leslie E. Devaney, City Attorney

ATTACHMENTS:

Exhibit 1 – Amendment – EMC Ch. 30.09 (Zoning Use Matrix)
Exhibit 2 – Amendment – Downtown Encinitas Specific Plan
Exhibit 3 – Amendment – North 101 Corridor Specific Plan
Exhibit 4 – Amendment – Encinitas Ranch Specific Plan
Exhibit 5 – Amendment – Cardiff-by-the-Sea Specific Plan

The revisions are in strikeout/underline format. Chapters or Sections which are being added as completely new provisions are not underlined as all text is new.

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on this _____ day of _____, 2021 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on this ____ day of _____, 2021 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this _____ day of _____, 2021.

Kathy Hollywood, City Clerk

EXHIBIT 1

Amendment – EMC Ch. 30.09

Title 30 – Zoning

Chapter 30.09 – Zoning Use Matrix

The following uses are **added** to the existing Zoning Use Matrix, including the corresponding footnotes, (and shall be integrated in alphabetical and numerical (footnotes) order) to read as follows:

USES	ZONES															
	RR; RR-1; RR-2	RS-11; R-3; R-5; R-8	R-11; R-15	R-20; R-25	R-30 OL	M H P	O P	L C	GC	VS C	LI	BP	P/ SP	ER /O S	L- LC	L- VS C
<u>Cannabis-Retailer</u> ⁴²	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X	X
<u>Cannabis-Commercial Cultivation</u> ⁴²	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<u>Cannabis-Product Manufacturing</u> ⁴²	X	X	X	X	X	X	X	X	X	X	P	P	X	X	X	X
<u>Cannabis-Kitchen</u> ⁴²	X	X	X	X	X	X	X	X	P	X	P	P	X	X	X	X
<u>Cannabis-Distribution</u> ⁴²	X	X	X	X	X	X	X	X	X	X	P	P	X	X	X	X
<u>Industrial Hemp</u> ⁴²	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

⁴² See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

EXHIBIT 2

Amendment – Encinitas Downtown Specific Plan

The Downtown Encinitas Specific Plan is hereby **amended** by adding the following uses, including the addition of footnotes, and shall be integrated into these Sections in alphabetical and chronological (footnotes) order, to read as follows (underline is used to denote new text being added):

Section 3.2.3.A.1 is amended to read as follows:

3.2.3 Mixed Use Zones

A. Zone: Commercial Mixed – First Street (D-CM-1)

1. Permitted Uses:

	Prohibited in a storefront location
<u>Cannabis – Retailer</u> ⁸	

8 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

Section 3.2.3.B.1 is amended to read as follows:

B. Zone: Commercial Mixed – Second Street (D-CM-2)

1. Permitted Uses:

Cannabis – Retailer⁷

7 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp related uses.

EXHIBIT 3

Amendment – North 101 Corridor Specific Plan

The North 101 Corridor Specific Plan is hereby **amended** by adding the following uses, including the addition of footnotes, and shall be integrated into these Sections in alphabetical and chronological (footnotes) order, to read as follows (underline is used to denote new text being added):

Section 3.1.2.A.1 is amended to read as follows:

A. Zone: Commercial Mixed 1 (N-CM-1)

1. Permitted Uses:

Cannabis – Retailer⁹

9 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp related uses.

Section 3.1.2.B.1 is amended to read as follows:

B. Zone: Commercial Mixed 2 (N-CM-2)

1. Permitted Uses:

Cannabis – Retailer⁹

9 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp related uses.

Section 3.1.2.C.1 is amended to read as follows:

C. Zone: Commercial Mixed 3 (N-CM-3)

1. Permitted Uses:

Cannabis – Retailer¹⁰

10 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

EXHIBIT 4

Amendment – Encinitas Ranch Specific Plan

The Encinitas Ranch Specific Plan is hereby **amended** to read as follows (underline is used to denote new text being added):

Section 6.05 is amended to read as follows:

6.05 OVERVIEW

Portions of the City's Municipal Code are Incorporated by Reference into this Specific Plan

To prevent unnecessary redundancy between the Encinitas Ranch and the City of Encinitas Municipal Code, the following chapters and sections in Title 30, as adopted and subsequently amended by the City of Encinitas, are incorporated in their entirety by reference into the Encinitas Ranch Zoning Ordinance, unless otherwise amended or qualified within Section 6.0 of this document:

- Chapter 9.25 – Cannabis Activity Zoning Ordinance of Encinitas
- Chapter 23.08 – Design Review
- Chapter 23.24 – Grading, Erosion & Sedimentation Control

...

The Encinitas Ranch Specific Plan is hereby **amended** by adding the following uses, including the addition of footnotes, and shall be integrated into these Sections in alphabetical and chronological (footnotes) order, to read as follows (underline is used to denote new text being added):

Section 6.2.2 of the Encinitas Ranch Specific Plan is amended to read as follows:

6.2 AGRICULTURAL ZONE (“AG” ZONE)

6.2.2 USES PERMITTED

A. Permitted Uses.

Cannabis - Commercial Cultivation⁵

Cannabis - Product Manufacturing⁵

Industrial Hemp⁵

5 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

Section 6.7.1 A of the Encinitas Ranch Specific Plan is amended to read as follows:

6.7 MIXED USE ZONE (“ER-MU1” ZONE)

6.7.1 USES PERMITTED

A. Permitted Uses.

Cannabis – Retailer⁶

(6) See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

Section 6.8.1 of the Encinitas Ranch Specific Plan is amended to read as follows:

6.8 MIXED-USE ZONE (“ER-MU2” ZONE)

6.8.1 USES PERMITTED

USE	WEST SAXONY
<u>Cannabis – Retailer⁸</u>	<u>P⁽⁸⁾</u>

(8) See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

Section 6.9.1 of the Encinitas Ranch Specific Plan is amended to read as follows:

6.9 COMMERCIAL ZONE (“ER-C” ZONE)

6.9.1 USES PERMITTED

A. Permitted Uses.

Cannabis – Retailer²

2 See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.

EXHIBIT 5

Amendment – Cardiff-by-the-Sea Specific Plan

The Cardiff-by-the-Sea Specific Plan is hereby **amended** by adding the following use to Table 3-1, including the addition of footnotes, and shall be integrated into these Sections in alphabetical and chronological (footnotes) order, to read as follows (underline is used to denote new text being added):

**TABLE 3-1
Cardiff-by-the-Sea Specific Plan Area
Zoning Matrix - Use Comparison**

P = Permitted by Right	P 1 = Permitted on ground floor only	Cm 2 = Upper floor only
C = Major Conditional Use Permit	P 2 = Upper floor only	A = Ancillary (see EMC 30.04)
Cm = Minor Conditional Use Permit	C 2 = Upper floor only	X = Prohibited

Use	ZONE				Notes
	C-R-11	C-OP	C-GC-1	C-GC-2	
<u>Cannabis – Retailer</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>See Chapter 9.25 of the Municipal Code for specific provisions on Cannabis and Hemp-related uses.</u>

ORDINANCE NO. 2020-18

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ENCINITAS
AUTHORIZING COMMERCIAL CANNABIS ACTIVITIES INVOLVING RETAIL
SALES, CULTIVATION, MANUFACTURING, CANNABIS KITCHENS AND
DISTRIBUTION, AND PERSONAL USE CULTIVATION, SUBJECT TO CERTAIN
REGULATIONS AND RESTRICTIONS

The people of the City of Encinitas do ordain as follows:

SECTION ONE: Title 9 of the Encinitas Municipal Code is hereby amended by adding a new Chapter 9.25, titled "Cannabis Activity Zoning Ordinance of Encinitas," to read as follows:

CANNABIS ACTIVITY ZONING ORDINANCE OF ENCINITAS

WHEREAS, in 1996 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 215, the Compassionate Use Act, that allows the use of cannabis for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003 the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical cannabis; prohibited the distribution of cannabis for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate cannabis for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical cannabis; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, in 2015 the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, comprising the Medical Cannabis Regulation and Safety Act and establishing a comprehensive regulatory framework for the production, transportation, and sale of medical cannabis; and

WHEREAS, in 2016 the voters of the State of California, including voters in the City of Encinitas, passed Proposition 64, the Adult Use of Marijuana Act, allowing for the adult use of cannabis and further clarifying state regulatory requirements; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution; and

WHEREAS, the voters of Encinitas now desire that the City exercise its police powers solely to provide for the zoning of retailers, cultivation, product manufacturing, and distribution in

such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW, THEREFORE,

BE IT ORDAINED, by a vote of the people of the City of Encinitas as follows:

Section 1. Definitions

"*Applicant*" means a person or organization who has registered with the City of Encinitas, per the process outlined by this ordinance and developed by staff, in order to obtain a Business License for a Cannabis Business.

"*Commercial Cannabis Activity*" means the commercial cultivation, possession, manufacture, distribution, processing, storing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products.

"*Cannabis Business*" means any Person lawfully engaged in a Commercial Cannabis Activity as set forth by the California Business and Professions Code, Division 10, and state rules and regulations implementing those laws.

"*Cannabis Business Type*" means the classification of "*Cannabis Business*" that a Person is pursuing in the City of Encinitas. For the purposes of this ordinance, the *Cannabis Business Types* are: *Retail, Cultivation, Product Manufacturing, Cannabis Kitchen* and *Distribution*.

"*Cannabis Concentrate*" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency, as defined by Section 26001 of the California Business and Professions Code.

"*Cannabis Kitchen*" means a premise where *edible cannabis products* are produced by a manufacturer.

"*Cultivation*" as defined by Section 26001 of the California Business and Professions Code.

"*Cultivation License Type*" is defined to mean a California state commercial marijuana license classification for cultivation in California Business and Professions Code section 26050, subdivision (a).

"*Cultivation Site*" as defined by Section 26001 of the California Business and Professions Code.

"*Cultivator*" is the organization or entity holding the Business License for *cultivation*.

"*Cannabis Products*" as defined by Section 11018.1 of the California Health and Safety Code.

"*Day Care Center*" as defined by Section 1596.76 of the California Health and Safety Code, properly licensed and zoned in the City of Encinitas, and actively operating and providing childcare to children under the age of 18.

"*Delivery*" as defined by Section 26001 of the California Business and Professions Code.

"*Distributor*" is the organization or entity engaging in wholesale distribution of cannabis in compliance with the regulations for a State Cultivation License Type 11 (Distributor), defined in California Business and Professions Code section 26050, subdivision (a)(19).

"*Distribution Site*" is defined to mean a physical *premise* where cannabis and *cannabis products* are distributed by a *distributor*.

"*Edible Cannabis Product*" means cannabis product that is intended to be used, in whole or in part, for human consumption, as defined by Section 26001 of the California Business and Professions Code.

"*Edible Production*" means the production of *edible cannabis products* by a *Manufacturer*.

"*Industrial hemp*" means a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa L.* having no more than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

"*Manufacturer*" as defined by Section 26001 of the California Business and Professions Code.

"*Product Manufacturing*" means the manufacturing of a non-edible *Cannabis Product*, such as a *cannabis concentrate*, by a *Manufacturer*.

"*Product Manufacturing Site*" is defined to mean a physical *premise* where *Product Manufacturing* occurs.

"*Owner*" means a Person with an aggregate ownership interest, direct or indirect, of twenty percent (20%) or more in a Commercial Cannabis Business, whether a partner, shareholder, member, or the like, including any security, lien, or encumbrance in an ownership interest that, upon default, could become an ownership interest of 20% or more in a Commercial Cannabis Business.

"*Plant Canopy*" is the designated area at a *indoor or mixed-light cultivation site* that will contain mature plants, defined as cannabis plants that are flowering. For *nursery cultivation*, *plant canopy* shall mean the designated area that will contain seeds, clones, and immature plants, defined as plants that are not flowering.

"*Playground*" means any outdoor grounds, owned or operated by the City, that contains any play or athletic equipment primarily used, or primarily intended to be used by, any person less than eighteen (18) years old.

"*Preference*" means that if there exists multiple conflicting *applicants* who register to obtain a *Cannabis Businesses* of the same type, during the registration period, where the granting of a Business License to one *applicant* would preclude another *applicant* from being granted a Business License, the *applicant* who meets the criteria for *Preference* who has submitted their initial application shall be considered for a Business License prior to other applicants to whom granting a Business License would conflict with their ability to obtain a Business License. In a scenario where there are of multiple conflicting *applicants*, the *applicant* who meets the largest number of criteria for *Preference* shall receive *Preference*.

"*Premise*" is defined to mean the legal parcel(s) of land and the improvements on it, including building(s), store(s), shop(s), apartment(s), or other designated structure. In the case of a parcel in an agricultural zone, *premise* is defined as the area inside of a building or other structure or the

area surrounded by a fence that is dedicated to *Commercial Cannabis Activity*. For a *playground*, premise is defined as the area containing the play or athletic equipment primarily used, or primarily intended to be used by, any person less than eighteen (18) years old. For a *playground*, measurements will be from the boundary of this area containing equipment.

"*Primary Caregiver*" as defined in Section 11362.7 of the Health and Safety Code.

"*Qualified Patient*" as defined in Section 11362.7 of the Health and Safety Code.

"*Retailer*" is the organization or entity engaging in retail sale and delivery of cannabis or cannabis products to customers, in compliance with the regulations for a State Retail License Type 10 (Retail), as specified in the California Business and Professions Code section 26050, subdivision (a)(18).

"*Responsible Person*" is defined as the person who is responsible for the operation, management, direction, or policy of a marijuana *retailer, cultivator, manufacturer, or distributor*.

A "*Skilled and Trained Workforce*" is defined as a workforce that meets all of the following conditions:

- (1) All of the workers are either *skilled journeypersons* or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations;
- (2) At least 60% of the *skilled journeypersons* by each contractor employed to perform work on the project are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
- (3) For an *apprenticeable occupation* in which no apprenticeship program had been approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations before January 1, 1995, up to one half of the graduation percentage requirements of (2) above may be satisfied by *skilled journeypersons* who commenced working in the *apprenticeable occupation* before the approval of an apprenticeship program for that occupation in the county in which the project is located by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations.

An "*apprenticeable occupation*" means an occupation for which the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations has approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

"*Skilled journeyperson*" means a worker who either:

- (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor; or

- (2) Has at least as many hours of on-the-job experience in an applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations.

"Sensitive Use" is defined as a *day care center, playground, other retailer, or school*. For purposes of this section, school means any public, or private, accredited institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

Section 2. Retailers

Retailers shall be allowed in the commercial land use zones: Commercial (ER-C), General Commercial (GC), Commercial Mixed Use (N-CM-3), Commercial Mixed Use (N-CM-2), Commercial Mixed Use (N-CM-1), Commercial Mixed Use (D-CM-2), Commercial Mixed Use (D-CM-1), General Commercial (C-GC2), General Commercial (C-GCI), and in the Mixed Use Land Use Zones ER-MU1 and ER-MU2, subject to the following restrictions and regulations.

- a) At least four licenses shall be granted to *retailers*. The City Council may choose to increase the number of licenses granted at their discretion.
- b) *Retailers* shall maintain a 1,000 foot separation from *sensitive uses*, as measured by a straight line from the closest property lines of the *premises* to the closest property line of the sensitive use. The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways, flood control channels, or railroad tracks without pedestrian or automobile crossings that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.
- c) A *Retailer* may engage in off-site *Delivery* from the location of the *Retailer* to a customer. The offsite *Delivery* must be made by an authorized employee in an authorized vehicle owned, or leased, by the *Retailer*. Offsite *Deliveries* may only be made during the hours of operation. The *Retailer* must adhere to any state rules and regulations regarding *Delivery*.
- d) Consultations by medical professionals shall not be permitted at a *retailer*.
- e) Lighting shall be provided to illuminate the interior of the *retailer*, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
- f) Security shall be provided at the *retailer* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises twenty-four (24) hours per day*.
- g) *Signs* shall be posted on the outside of the *retailer* and shall only contain the name of the business, limited to two colors.

- h) The emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the *retailer* in character size at least two inches in height.
- i) The *retailer* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
- a) Rules, regulations and local permitting requirements imposed on a *retailer* by the City shall conform to the State licensing requirements for a *retailer*, as set forth by the California Business and Professions Code, Division 10, and state rules and regulations implementing those laws.

Section 3. *Cultivation*

Commercial *Cultivation Sites* shall be allowed in agricultural (AG) zones, subject to the following restrictions and regulations.

- a) All *cultivation* must occur within the interior of a building or greenhouse. If the cultivation takes place within a greenhouse, the greenhouse construction must meet any greenhouse building standards within the City code, and obtain any building permits required for greenhouse construction or expansion.
- b) An *applicant* for a *cultivation site* must specify for which *Cultivation License Types* the *applicant* will apply. Any *cultivation* must conform to the *plant canopy* and other limits set forth by the applicable *Cultivation License Types*.
- c) Plants cultivated shall be tracked utilizing the State's track-and-trace system for cannabis.
- d) Records of *cultivation*, both internal and as part of the state's track-and-trace system, must be made available to City inspectors upon request.
- e) Security shall be provided at the commercial *cultivation site*, which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.
- f) From a public right of way, there shall be no visual evidence of *cultivation* either within or outside the facility. Adverse impacts of *cultivation* shall be mitigated so that a "public nuisance" as defined by California Civil Code section 3480 does not exist, including but not limited to, adverse impacts of dust, glare, heat, noise, noxious gases, significant odor, or the use or storage of hazardous materials, processes, products or wastes. If an adverse impact occurs, a licensee shall have a reasonable opportunity and time to cure the complaint, adverse impact, or possible non-compliance as defined in this section before being subject to penalty, suspension, or revocation of the Business License for *cultivation*.
- g) No external signage shall be allowed, other than the address of the *premise*.
- h) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, agents, and contractors of the *cultivator* shall be present on the premises. Transporters and representatives of retailers, distributors,

manufacturers, testing labs, and other licensees under the Medical Cannabis Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the *cultivator* to conduct business as required and appropriate.

- i) The City encourages *cultivators* to operate in an environmentally sustainable manner. Preference will be given to *applicants* for *cultivation* who show their commitment to environmentally sustainable practices including building LEED certification, organic growing practices, and adoption of EPA WaterSense identified water saving technologies.
- j) Rules, regulations, and local permitting requirements imposed on a *cultivator* and their affiliated *cultivation site* by the City shall conform to the State licensing requirements for a *cultivator* as set forth by the California Business and Professions Code, Division 10.

Section 4. Product Manufacturing

Product Manufacturing Sites shall be allowed in Business Parks (BP), Light Industrial (LI), and Agricultural (AG) zones, subject to the following restrictions and regulations.

- a) The use of volatile solvents for *Product Manufacturing* is prohibited.
- b) The production of *edible cannabis products* is prohibited at a Product Manufacturing site.
- c) All *Product Manufacturing* must conform to rules and requirements set forth by the California Department of Public Health for cannabis manufacturing, including those for testing, labeling and quality assurance.
- d) Security shall be provided at the *Product Manufacturing site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.
- e) No external signage shall be allowed, other than the address of the *premise*.
- f) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, agents, and contractors of the *manufacturer* shall be present on the premises. Transporters and representatives of retailers, distributors, cultivators, testing labs, and other licensees under the Medical Cannabis Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the *manufacturer* to conduct business as required and appropriate.
- g) Rules, regulations, and local permitting requirements imposed on a *Manufacturer* and its associated *Product Manufacturing Site* by the City shall conform to the State licensing requirements for *Manufacturers*, as set forth by the California Business and Professions Code, Division 10.

Section 5. Cannabis Kitchens

Cannabis Kitchens shall be allowed in Business Parks (BP), Light Industrial (LI), and General Commercial (CG) zones, subject to the following restrictions and regulations.

- a) No extraction of cannabis concentrates shall be allowed on premise.
- b) All *edible cannabis product* production must conform to rules and requirements set forth by the California Department of Public Health for cannabis manufacturing, including those for testing, labeling and quality assurance.
- c) Security shall be provided at the *Cannabis Kitchen site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise* during business hours.
- d) No external signage shall be allowed, other than the address of the *premise*.
- e) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, agents, and contractors of the *manufacturer* shall be present on the premises. Transporters and representatives of retailers, distributors, cultivators, testing labs, and other licensees under the Medical Cannabis Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the *manufacturer* to conduct business as required and appropriate.
- f) Any *Cannabis Kitchen* employee who is directly involved in the production, or handling, of *edible cannabis products* as part of their employment must pass a state-approved food safety certification exam.
- g) A *Cannabis Kitchen* also must be a California-licensed commercial kitchen or a cottage kitchen with a class B permit.
- h) Rules, regulations, and local permitting requirements imposed on a *Manufacturer* and its associated *Cannabis Kitchen* by the City shall conform to the State licensing requirements for *Manufacturers*, as set forth by the California Business and Professions Code, Division 10.

Section 6. Distribution

Distribution Sites shall be allowed in Business Parks (BP) as well as in Light Industrial (LI) zones subject to the following restrictions and regulations.

- a) Security shall be provided at the *distribution site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.
- b) No external signage shall be allowed, other than the address of the *premise*.
- c) No public access or sales shall be allowed on the *premise*. Only directors, officers, managers, employees, agents, and contractors of the *distributor* shall be present on the premises. Transporters and representatives of retailers, other distributors, cultivators, manufacturers, testing labs, and other licensees under the Medical Cannabis Regulation and Safety Act shall be allowed on the *premise* with prior notice to and permission by the *distributor* to conduct business as required and appropriate.

- d) Rules, regulations, and local permitting requirements imposed on a *distributor* and their affiliated *Distribution Site* by the City shall conform to the State licensing requirements for *Distributors*, as set forth by the California Business and Professions Code, Division 10.

Section 7. Marijuana Business Registration

Any *Cannabis Business* shall register with the City of Encinitas and shall show compliance with the below regulations prior to being issued a business license and beginning operations. The City Manager or designee of same will administer marijuana business registration.

- a) The *responsible person* and *owners* of a *Cannabis Business* shall be subject to a background check. Any person who has been convicted of a serious or violent felony may not operate, manage, control, or own a *Cannabis Business*.
- b) An *Applicant* for a Business License for a *Cannabis Business* must provide written proof that the building owner or management condones a *Cannabis Business* on the *premise*.
- c) *Preference* will be given to *applicants* where an *owner* of the applying organization for a *Cannabis Business* has at least one of the following types of experience:
 - a. a minimum of twelve (12) consecutive months as an *Owner* or *Responsible Person* of a *Cannabis Business*, within the previous five (5) years, in a jurisdiction permitting such *Commercial Cannabis Activity*. The twelve (12) consecutive months of lawful *Cannabis Business* ownership demonstrated must be of a type substantially similar to that allowed by the City License for which the *Applicant* is applying; or
 - b. a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership of thirty percent (30%) or more in a lawful pharmaceutical business licensed and regulated by a state or the federal government. The thirty-six (36) months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the *applicant* is applying;
 - c. a minimum of eighteen (18) consecutive months as an owner with an aggregate ownership interest of twenty percent (20%) or more in a lawful, properly licensed business with an average of four (4) or more employees located within the City, thereby demonstrating a record of experience, familiarity and compliance with City rules and regulations.

A *Cannabis Business* owner who meets multiple criteria will receive greater preference based on the number of criteria they meet.

- d) No *Cannabis Business* shall be allowed to operate where a owner, or responsible person, has been cited or fined by any California jurisdiction for operating a non-permitted cannabis business after October of 2015, when the state passed the Medical Cannabis Regulation and Safety Act, that first defined operating rules for *Cannabis Businesses* in the state of California.

- e) The City may charge a reasonable registration fee for a *Cannabis Business* and a reasonable annual fee for regulating the *Cannabis Business*. Such fees shall be established by the City.
- f) A Business License for a *Cannabis Business* may be revoked or suspended due to legitimate loitering, significant smell, or noise complaints, upon City confirmation of the significant smell, noise, or loitering; non-compliance with the regulations specified in this ordinance, following City confirmation of the non-compliance; or non-compliance with other applicable state or local regulation following City or state confirmation of the non-compliance. The licensee shall have a reasonable opportunity and time to cure the complaint or possible non-compliance as defined in this section before being subject to suspension, penalty, or revocation of the Business License.
- g) A *Cannabis Business* shall be subject to any relevant city municipal codes including the Design Review process as defined by Chapter 23.08 of the Encinitas City Code, as well as the Special Purpose Overlay Zone regulations as defined by Chapter 30.34 of the Encinitas City Code.
- h) For any *Cannabis Business Type* where this ordinance explicitly specifies a numeric limit on the number of business licenses that shall be granted, the city shall conduct a lottery of eligible potential business operators of the *Cannabis Business Type* who have registered with the City and have been determined to be in compliance with all of the rules and regulations outlined in this ordinance, in order to determine which shall receive a business license. The lottery shall be designed in the following manner.
 - a. The lottery shall be tiered, with the first lottery drawing among the *applicants* who meet the maximum number of criteria for *preference*. The subsequent lottery drawings shall take place among the *applicants* who meet the second largest number of criteria, and so on, until all licenses are granted.
 - b. In the case where a lottery is conducted, the city shall have a registration period of one month to accept registrations from potential *Cannabis Businesses* of the *Cannabis Business Type* wishing to operate in the City.
 - c. The City shall then determine which *applicants* comply with the below criteria, in order to qualify for the lottery. The lottery shall be conducted after verifying which *applicants* who registered during the registration period, meet the requirements outlined below. A *applicant* who is unable to meet the requirements shown below shall be ineligible to compete in the lottery.
 - i. The address selected complies with all relevant zoning and sensitive use requirements.
 - ii. The *applicant* has submitted written proof that the building owner or management condone a *Cannabis Business* on the *premise* in the form requested by the city.
 - iii. The *applicant* has submitted proof that they meet the *preference criteria* for any *preference* they claim.

1. If the documentation of a preference criteria qualification submitted is deemed inadequate, the *applicant* shall be given a reasonable opportunity to provide further documentation prior to the lottery. However, if such documentation is not provided, the *preference* based on this criteria shall not be granted.
- iv. A background check has been conducted verifying that the *owners* of a *Cannabis Business* have not been convicted of a serious or violent felony.
- d. An *applicant* that is selected in the lottery must demonstrate compliance with all regulations outlined in this ordinance prior to obtaining their Business License and beginning operations.
 - i. If an *applicant* selected in the lottery is unable to comply with the regulations and requirements outlined in this ordinance in order to obtain a business license from the City within eighteen (18) months of being selected, their selection shall be retracted, and a subsequent registration period shall occur and lottery shall be held for the opportunity to obtain the forfeited business license.
 1. If the majority of the delays in the licensing of a *Cannabis Business* are determined to be due to processing, scheduling, or other delays on the part of the city or other relevant authority, beyond the control of the *applicant*, the period for compliance shall be extended for the *applicant*, proportional to the delays.
 - ii. If a *Cannabis Business* for a *Cannabis Business Type* subject to a lottery were to have their business license revoked, a subsequent registration period shall occur and an additional lottery shall be held to determine who will be eligible to obtain the business license made available following the revocation.
 - i) For any *Cannabis Business Type* where this ordinance does not specify a numeric limit on the business licenses that shall be granted, the city should allow applicants for Cannabis Businesses to register with the city and apply for business licenses on an ongoing basis, without a fixed registration period for application.
 - j) A Cannabis Business that has obtained a Business License in the City may subsequently transfer their business license to a another premise in the City, provided that the new premise meets all of the requirements outlined in this ordinance for their *Cannabis Business Type*.

Section 8. Industrial Hemp

Industrial hemp shall be allowed in agricultural zones, subject to the following restrictions and regulations. *Industrial Hemp* shall be cultivated in compliance with the California Food and Agricultural Code, Division 24, as well as all relevant regulations for agriculture and agricultural products in the Encinitas City Code. Business licenses in the City of Encinitas for Industrial Hemp

will be made available sixty (60) days after the State of California develops final regulations for industrial hemp production and licensing.

A Business License for an *Industrial Hemp* agricultural activity may be revoked or suspended due to legitimate loitering, significant odor, or noise complaints, upon City confirmation of the smell, noise, or loitering; non-compliance with the regulations specified in this ordinance, following City confirmation of the non-compliance; or non-compliance with other applicable state or local regulation following City or state confirmation of the non-compliance. The licensee shall have a reasonable opportunity and time to cure the complaint or possible non-compliance as defined in this section before being subject to suspension, penalty, or revocation of the Business License.

Section 9. Personal Use Cultivation

A *qualified patient* may cultivate up to 100 square feet indoors for personal use. A *primary caregiver* may cultivate up to 100 square feet indoors for the personal medical use of a single *qualified patient*, and may cultivate for no more than five (5) maximum individual *qualified patients*. Personal use cultivation may also be further restricted, or disallowed, by a building's owner, management, or governing housing association as allowable by state law.

Personal use *cultivation*, for medical and adult use, must conform to state law and local codes, including, but not limited to, nuisance codes, building codes, electrical codes, and waste disposal codes. No additional city permission, clearance or registration shall be necessary or imposed by the City for personal use cultivation.

Section 10. Skilled and Trained Workforce

For all property or building construction or engineering activities required to obtain permits from the city of Encinitas necessary to operate a *retail site*, *cultivation site*, *Product Manufacturing site* or *distribution site*, a *skilled and trained workforce* shall be required for all contractors engaged in the property or building construction activities.

Section 12. Amendment of this Measure.

This measure, except as specified herein, shall only be amended by a subsequent vote of the People. Notwithstanding any other law or provision in this measure, the City Council shall have the right and the ability to amend or modify this measure under the following circumstances:

- a. After this measure has been in effect in the City of Encinitas for a period of three years, the City Council, in its sole and exclusive discretion, determines that regulations, or zoning, outlined in the measure warrant adjustment due to inflation, unreasonable cost burdens to the City or *Cannabis Businesses*, unreasonable regulatory burdens to the City or *Cannabis Businesses*, or that a zoning or regulatory restriction contained in the measure has created any other unnecessary or unanticipated burden to the City or *Cannabis Businesses*, the City Council shall be granted the power to modify the ordinance to relax the zoning or regulatory burdens on the City and/or *Cannabis Businesses*.
- b. If the City Attorney determines that the regulations or zoning established in this measure no longer conform to the California State regulations for marijuana activity or that the regulations established in this measure fail to conform to the local licensing

requirements for *Cannabis Businesses*, the City Council shall be granted the power to make the changes necessary to bring the City's regulation of *Cannabis Businesses* into compliance with current state law.

Section 13. Effective Date

That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 14. Severability

If any section, sub-section, sentence, clause, phrase, part, or other portion of this measure, or application thereof, is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the remaining portions or provisions of this measure. It is hereby declared by the people voting for this measure that this measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, sentences, clauses, phrases, parts or portions, or the application thereof, are declared invalid or unconstitutional.

Section 15. Consistency with Other Ballot Measures

This measure is inconsistent with and intended as an alternative to any other initiative or measure placed on the same ballot that addresses the same subject matter as this measure. In the event that this measure and another initiative or measure addressing the same subject matter as this measure, or any part thereof, is approved by a majority of voters as the same election, and this measure receives a greater number of affirmative votes than any other such initiative or measure, then this measure shall prevail and control in its entirety and said other initiative or measure shall be rendered void and without any legal effect.

Section 16. California Environmental Quality Review

The city shall determine whether land uses outlined in this ordinance are subject to review under the California Environmental Quality Act (CEQA) or whether they wish to grant categorical exemption(s). The City shall use the same criteria for CEQA exemption and review as is applied to other land uses and land use projects.

Section 16. Special Election

The undersigned voters of the City do hereby request that this ordinance be put to a vote of the people in a special election.

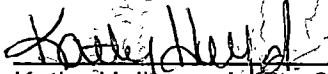
SECTION TWO: Effective Date

Pursuant to Elections Code section 9217, the ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date.

SECTION THREE: Repeal or Amendment

Pursuant to Elections Code section 9217, no ordinance that is proposed by initiative petition and adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.

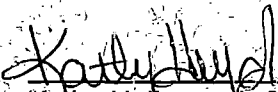
PASSED, APPROVED, AND ADOPTED by the people of the City of Encinitas at a Regular Municipal Election held on November 3, 2020, and Election Results Certified by the Encinitas City Council on December 8, 2020.



Kathy Hollywood, City Clerk
City of Encinitas, California

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance No. 2020-18 which was duly and regularly adopted by the voters of the City of Encinitas at a General Municipal Election held on November 3, 2020.



Kathy Hollywood, City Clerk
City of Encinitas, California