

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING AMENDMENT NO. A-017-2017 AMENDING PORTIONS OF TITLE 9 (ZONING CODE) AND REPEALING CHAPTER 5.85 OF THE GARDEN GROVE MUNICIPAL CODE ADOPTING ACCESSORY DWELLING UNIT REGULATIONS AND MAINTAINING THE BAN ON CANNABIS ACTIVITIES CONSISTENT WITH RECENT CHANGES TO STATE LAW.

City Attorney Summary

This Ordinance amends the Garden Grove Zoning Code to revise second unit regulations in single-family residential lots and replace them with new accessory dwelling unit regulations consistent with the 2017 revisions to State's Planning and Zoning Law. It further revises the Municipal Code to continue to maintain the ban on cannabis activities consistent with recent changes to state law.

WHEREAS, in 2016 the State Legislature adopted Assembly Bill 2299 and Senate Bill 1069 to streamline current regulations for second units in residential districts, now termed "accessory dwelling units"; and

WHEREAS, the new State regulations preempt local regulation until the City adopts regulations consistent with the standards adopted in the new legislation; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act (the "Adult Use of Marijuana Act") legalizing recreational marijuana use for adults 21 or older; and

WHEREAS, pursuant to the Adult Use of Marijuana Act, local governments may continue to prohibit cannabis business activities, but may not prohibit adults 21 years or older from cultivating up to six living marijuana plants inside a private residence, or inside an accessory structure located thereon, that is fully enclosed and secure; and

WHEREAS, on August 23, 2011, the City Council adopted Ordinance No. 2798-A, adding Chapter 5.85 "Registration Process for Medical Marijuana Dispensaries" to Title 5 of the Garden Grove Municipal Code. Chapter 5.85 provided for the identification of unauthorized medical marijuana dispensaries operating in the City and prohibited any new medical marijuana dispensaries while new regulatory and zoning provisions were developed and considered; and

WHEREAS, on January 26, 2016, the City Council adopted Ordinance No. 2863, adding Chapter 9.52 "Cannabis Activities" to Title 9 of the Garden Grove Municipal Code. Chapter 9.52 prohibits the establishment, maintenance, or operation of marijuana dispensaries and related commercial cannabis activities, including the

distribution, manufacture cultivation and delivery of cannabis and/or cannabis products in all zoning districts, planned unit development districts, and specific plan areas in the City; and

WHEREAS, the City wishes to continue to provide for the public health, safety and welfare of the community by establishing local controls over land use, including accessory dwelling units and a ban on commercial cannabis activities; and

WHEREAS, following a Public Hearing held on April 20, 2017, the Planning Commission adopted Resolution No. 5882-17 recommending approval of Amendment No. A-017-2017; and

WHEREAS, pursuant to a legal notice, a Public Hearing regarding the proposed adoption of this Ordinance was held by the City Council on May, 23, 2017, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The above recitals are true and correct.

SECTION 2: Subsection C of Section 9.04.060 of Chapter 9.04 of Title 9 of the Garden Grove Municipal Code is hereby amended to add a definition for "Accessory dwelling unit" and to delete the current definition for "Second unit" as follows (additions in ***bold/italic***, deletions in ~~strike-through~~):

"Accessory dwelling unit" (also "ADU," "second unit," or "granny unit") means an attached or detached residential dwelling unit situated on the same parcel as an existing primary single-family dwelling, which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes and "efficiency unit" as defined in California Health and Safety Code Section 17958.1 and a "manufactured home" as defined in California Health and Safety Code Section 18007. An accessory dwelling unit may be established through (i) construction of a new detached structure, (ii) construction of an addition to an existing single-family dwelling, (iii) conversion of existing space in an existing single-family dwelling, or (iv) conversion of an existing garage or other accessory structure on a lot containing an existing single-family dwelling, provided it is set back at a distance sufficient for fire safety.

~~"Second unit" means an attached or detached residential dwelling unit located on the same lot as a single family residence that provides independent~~

~~living facilities for one or more persons, including a kitchen or any other area used for the daily preparation of food.~~

SECTION 3: Table 1 of Section 9.08.020.030 of Chapter 9.08 of Title 9 of the Garden Grove Municipal Code is hereby amended to replace "Second Unit" with "Accessory dwelling unit" as follows (additions in **bold italic**, deletions in ~~strikethrough~~):

**Table 1
 CITY OF GARDEN GROVE LAND USE MATRIX**

ZONES USES	R-1
Residential	
Accessory Buildings and Structures	I*
<i>Accessory Dwelling Unit</i>	<i>P*</i>
Agricultural Growing and Produce Stand	P
.
Residential Care Facility for the Elderly (RCFE) – 6 Persons or Less	P
Second Unit	p*
Single-Family Dwelling	P
.

SECTION 4: Subsection L of Section 9.08.020.050 of Chapter 9.08 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in **bold italic**, deletions in ~~strikethrough~~):

- L. ~~Second~~***Accessory Dwelling*** Units. Subject to the following conditions:
 1. ~~A second~~ ***An accessory*** dwelling unit that conforms to the requirements of this subsection shall be considered consistent with the allowable density for the lot and the single-family land use designation for such lot as provided in the applicable general plan and zone map for such lot. ***Accessory dwelling units shall not be considered new residential uses for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.***
 2. The property shall be zoned for R-1 single-family residential uses.
 3. The lot on which the ~~second~~ ***accessory dwelling*** unit is proposed to be established shall contain one existing permanent single-family dwelling (the "primary unit") and no existing granny unit, guest house, servants quarters, accessory living quarters, or

similar facility, unless the proposal includes the demolition or modification of such facility so as to comply with the provisions of this subsection.

4. The primary unit complies with current parking requirements or, if the primary unit does not comply with the parking requirements, the primary unit will be made to comply with the parking requirements as part of the application for a proposed ~~second~~ **accessory dwelling** unit. ***When a garage, carport, or covered parking structure containing required off-street parking spaces for the primary unit is demolished or eliminated in conjunction with the construction of an accessory dwelling unit, said parking spaces shall be replaced. These replacement parking spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.***
5. ***The lot and all structures thereon shall be legal or legal nonconforming, or will be made so prior to development of the accessory dwelling unit.*** If the primary unit or any associated accessory structures have legally established deviations or variances from current zoning requirements, a ~~second~~ **an accessory dwelling** unit may be permitted, provided the ~~second~~ **accessory dwelling** unit complies in all respects with the requirements of this subsection.
6. Adequate infrastructure, including, but not limited to, sewer and water services and ***streets sufficient for*** traffic flow and circulation, shall be available within the residential neighborhood in which ~~the second~~ **an accessory dwelling** unit ***not located within the space of an existing structure*** is proposed to be located to serve such ~~second~~ **accessory dwelling** unit, ***as determined by the Public Works Director.***
7. The ~~second~~ **accessory dwelling** unit may be either attached to or detached from, ***or located within the existing space of,*** the existing single-family residence and shall be located on the same lot as the existing single-family residence.
8. ***Except as otherwise provided in this subsection or by state law,*** ~~the~~ following development and design standards shall apply to ~~second~~ **accessory dwelling** units:
 - a. The lot is a minimum of ~~9,000~~ **7,200** square feet in size.

- b. No more than one ~~second~~ **accessory dwelling** unit shall be allowed on a single lot.
- c. Each ~~second~~ **accessory dwelling** unit shall meet the following minimum sizes based on the number of sleeping rooms, **provided, however, that a smaller unit constituting an "efficiency unit" as defined California Health and Safety Code Section 17958.1 is permitted:**
 - i. Studio units: 500 square feet.
 - ii. One sleeping room: 600 square feet.
 - iii. Two sleeping rooms: 700 square feet.
- d. The ~~second~~ **accessory dwelling** unit shall not contain more than two sleeping units and shall not exceed ~~700~~ **800** square feet in area, except as expressly provided herein.
- e. The ~~second~~ **accessory dwelling** unit may include an attached covered patio and/or porch, which, if provided, shall be integrated into the design of the ~~second~~ **accessory dwelling** unit and shall not exceed 80 square feet.
- f. The ~~second~~ **accessory dwelling** unit may include an attached one-car garage, which, if provided, shall be integrated into the design of the ~~second~~ **accessory dwelling** unit and shall not exceed 250 square feet.
- g. In no event shall ~~an~~ ~~second~~ **accessory dwelling** unit including porch, patio, and garage, exceed ~~1,000~~ **1,100** square feet.
- h. The ~~second~~ **accessory dwelling** unit shall have a separate entrance and shall contain kitchen and bathroom facilities separate from those of the existing single-family residence. Laundry hookups to serve the ~~second~~ **accessory dwelling** unit are encouraged.
- i. **Unless otherwise required by applicable law or the utility provider or determined by the Public Works Director to be necessary, an accessory dwelling unit shall be served by the same water, sewer, and other**

utility connections serving the primary unit, and no ~~No~~ separate utility meters shall be permitted for the ~~second~~ **accessory dwelling** unit. **An accessory dwelling unit must receive the approval of the local health officer where a private sewage disposal system is being used.**

- j. **Except to the extent otherwise provided in this subsection,** ~~The second~~ **the accessory dwelling** unit shall conform to all the development standards for the R-1 zone **set forth in Section 9.08.040**, including, but not limited to, standards for front, rear, and side yard setbacks, height, ~~and~~ lot coverage, **lot width, building placement, design and architectural compatibility, driveway width, screening of mechanical equipment and metering devices, landscaping, walls, fences, hedges, and parking spaces.**
- k. The ~~second~~ **accessory dwelling** unit shall be considered as part of the 50% lot coverage calculation that also includes all buildings and structures (primary and accessory), ~~and~~ **and** uncovered and covered parking areas, ~~and~~ driveways, but excludes uncovered swimming pools and uncovered **permeable or semi-permeable** recreational **surface** areas.
- l. **Attached accessory dwelling units shall comply with the setback standards established for additions to single-family dwellings, and detached accessory dwelling units shall comply with the setback standards established for detached accessory structures. Notwithstanding the foregoing, no setback is required where an existing garage is converted to an accessory dwelling unit. A minimum five (5) foot yard rear and side yard setback is required for any accessory dwelling unit constructed above an existing garage (if otherwise permitted).** A detached ~~second~~ **accessory** dwelling unit shall have a minimum separation of six feet between the primary unit and the detached-~~second~~ **accessory dwelling** unit.
- m. ~~Second~~ **Detached accessory dwelling** units shall be one story, constructed at ground level, and shall not be more than 17 feet in height measured from ground level to the highest point on the roof. **Attached accessory dwelling units developed as additions to primary dwelling**

units shall be subject to the height limits and related standards applicable to additions to existing single-family residences, including, but not limited to, all privacy provisions limiting window placement and design. Exterior stairs associated with an attached accessory dwelling unit shall only be permitted if they would otherwise be allowed for the primary unit, shall not be located on the front façade of the structure, and shall be oriented and designed in such a manner so as not to permit unobscured views into windows of adjacent residential dwelling units or to pools, spas, or similar recreational areas situated on adjacent properties.

- n. The design, color, material, and texture of the roof of the second ***accessory dwelling*** unit shall be substantially the same as the primary unit.
- o. The color, material, and texture of all building walls of the second ***accessory dwelling*** unit shall be similar to and compatible with the primary unit.
- p. The design of the second ***accessory dwelling*** unit shall be architecturally compatible with the primary unit and shall maintain the scale and appearance of the existing single-family unit.
- q. ***Except as otherwise provided herein, one*** ~~One~~ enclosed off-street ***parking*** space shall be provided for a single ***an accessory dwelling*** unit with one bedroom or no bedroom. ~~One enclosed space and one uncovered~~ ***Two off-street parking*** spaces shall be provided for a two-bedroom second ***accessory dwelling*** unit. ~~The one uncovered space may be designed as a tandem parking space in front of the new enclosed space for the second unit.~~ ***Parking for the accessory dwelling unit is in addition to the required parking for the primary unit. Required off-street parking spaces for an accessory dwelling unit may be provided as tandem parking on an existing driveway or in setback areas approved by the Community and Economic Development Director ("Director"), unless the Director specifically finds that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions, or are not permitted anywhere in the city.***

Exception: No additional off-street parking spaces are required for a new accessory dwelling unit in any of the following circumstances:

- i. The accessory dwelling unit is located within one-half mile of public transit;**
 - ii. The accessory dwelling unit is located within an architecturally and historically significant district;**
 - iii. The accessory dwelling unit is part of the existing primary residence or an existing accessory structure;**
 - iv. When on-street parking permits are required, but not offered to the occupant of the accessory dwelling unit; or**
 - v. When there is a car share vehicle located within one block of the accessory dwelling unit.**
- r. To the maximum extent feasible, the ~~second~~ **accessory dwelling** unit shall utilize the same vehicular access that serves the primary dwelling unit; however, the parking area for the second unit shall have approved access to a public right-of-way.
- s. An accessory dwelling unit shall have a separate entrance than the primary unit. An uncovered pathway from the street to the entrance of an accessory dwelling unit (called as a "passageway") is not required.**
9. The owner of the property shall occupy one of the residential units. The residential unit that is not occupied by the owner may be rented or leased **for terms of 30 days or more**. In the event the owner of the lot shall cease to occupy a unit on the lot, the ~~second~~ **accessory dwelling** unit shall automatically become non-habitable space, shall not be used as a dwelling unit, and shall not be rented or leased for any purpose.
10. Sale or ownership of a ~~second~~ **an accessory dwelling** unit separate from the existing single-family unit is prohibited.

11. Prior to issuance of a building permit for a ~~second~~ **an accessory dwelling** unit, the property owner shall record with the County Recorder's office an agreement with the City setting forth the property owner's acknowledgement and agreement with the requirements of this subdivision, in a form satisfactory to the City Manager or the City Manager's designee and the City Attorney or the City Attorney's designee, **which runs with the land and describes restrictions that allow for the continued use of the accessory dwelling unit as follows:**
 - a. **The accessory dwelling unit shall not be sold or owned separately from the primary dwelling unit on the property, and the property shall not be subdivided in any manner that would authorize such separate sale or ownership.**
 - b. **The accessory dwelling unit may not be rented for a term of less than thirty (30) days.**
 - c. **The accessory dwelling unit is restricted to the size and attributes set forth in this subsection. If the accessory dwelling unit is an "efficiency unit" as defined California Health and Safety Code Section 17958.1, occupancy of the unit shall be restricted to no more than the number of persons corresponding to the size of the efficiency unit.**
 - d. **The required number of parking spaces (if any) shall be provided for the accessory dwelling unit at all times.**
 - e. **The accessory unit shall be considered legal only so long as either the primary dwelling unit, or the accessory dwelling unit, is occupied by an owner of record of the property as his or her principal residence. In the event an owner of the lot shall cease to occupy a unit on the lot, the accessory dwelling unit shall automatically become non-habitable space, shall not be used as a dwelling unit, and shall not be rented or leased for any purpose.**
 - f. **The restrictions shall run with the land and be binding upon any successor in ownership of the property, and lack of compliance shall be good cause for legal action against the property owner for**

compliance with the requirements for an accessory dwelling unit.

12. ***Applications for development of an accessory dwelling unit must be submitted to the Director on a form prepared by the city and must include all information and materials proscribed by such form. No application shall be accepted unless it is completed as prescribed and is accompanied by payment for all applicable fees. The Director shall ministerially review and approve or disapprove a complete application for an accessory dwelling unit within 120 days of submittal of a complete application. Review is limited to ensure that the accessory dwelling unit complies with the requirements of this subsection. Any owner that is unable to comply with the development standards and conditions of this subsection shall first apply for and secure the approval of a variance pursuant to the provisions of this code before a second unit may be approved.***

13. ***In addition to approval of an accessory dwelling unit application, the applicant shall be required to obtain any appropriate permits from the building division prior to the construction or conversion of the accessory dwelling unit. Except as otherwise provided in this subsection or by state law, all building, fire, and related code requirements applicable to habitable dwellings apply to accessory dwelling units. Pursuant to Government Code section 65852.2, an accessory dwelling unit shall not be required to provide fire sprinklers if they are not required for the primary unit.***

14. ***Notwithstanding the provisions of paragraph 8 of this subsection, the city shall approve a building permit for an accessory dwelling unit to create within a single-family residentially zoned property one accessory dwelling unit per single-family lot if the accessory dwelling unit is contained within the building envelope of an existing legal primary unit, garage, or other accessory structure, has independent exterior access from the existing legal primary unit, complies with all building standards, and the Director determines that the side and rear setbacks are sufficient for fire safety.***

SECTION 5: Exemption (b.) of Subsection D of Section 9.08.040.030 of Chapter 9.08 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in ***bold italic***, deletions in ~~strikethrough~~):

Exemptions:

- a. One-story detached accessory structures used as tool sheds, playhouses and similar uses shall be exempt from the architectural requirements contained in Section 9.08.040.030.A, provided any such structure does not exceed 120 square feet of projected roof area and is located to the rear and interior side of the main building.
- b. ~~Second~~ ***Accessory dwelling*** units, including porch and/or patio areas and enclosed parking areas dedicated to the ~~second~~ ***accessory dwelling*** unit that are within the maximum area for a ~~second~~ ***accessory dwelling*** unit, shall be exempt from the provisions of this subsection.

SECTION 6: Exemption (b.) of Subsection D of Section 9.12.040.030 of Chapter 9.08 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in ***bold italic***, deletions in ~~strikethrough~~):

Exemptions:

- a. One-story detached accessory structures used as tool sheds, playhouses and similar uses shall be exempt from the architectural requirements contained in Section 9.12.040.030.A, provided any such structure does not exceed 120 square feet of projected roof area and is located to the rear and interior side of the main building.
- b. ~~Second~~ ***Accessory dwelling*** units, including porch and/or patio areas and enclosed parking areas dedicated to the ~~second~~ ***accessory dwelling*** unit that are within the maximum area for a ~~second~~ ***accessory dwelling*** unit, shall be exempt from the provisions of this subsection.

SECTION 7: Chapter 5.85 of Title 5 of the Garden Grove Municipal Code is hereby repealed.

SECTION 8: Section 9.52.020 of Chapter 9.52 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in ***bold/italics***, deletions in ~~strike-through~~):

- A. Cannabis Dispensaries and Delivery Prohibited. ***Except as exempted in subsection (C) below***, cannabis dispensaries and cannabis delivery are prohibited in all zoning districts, planned unit development districts,

and specific plan areas in the City. It shall be unlawful for any person or entity to own, manage, conduct, or operate any cannabis dispensary or cannabis delivery service or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any cannabis dispensary or cannabis delivery service in the City of Garden Grove.

- B. Establishment or Maintenance of Cannabis Dispensaries Declared a Public Nuisance. **Except as exempted in subsection (C) below**, the establishment, maintenance, or operation of a cannabis dispensary or cannabis delivery service as defined in this chapter within the City limits of the City of Garden Grove is declared to be a public nuisance and enforcement action may be taken and penalties assessed pursuant to Title 1, Chapter 1.04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.
- C. **Exemptions. Pursuant and subject to Proposition 64 adopted by the State voters in November 2016, this section shall not prohibit (1) the possession, planting, cultivation, harvesting, drying, or processing of up to 6 marijuana plants by persons 21 years of age or older inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure; or (2) the possession of or giving away of the marijuana produced by such plants to persons 21 years of age or older.**

SECTION 9: Section 9.52.030 of Chapter 9.52 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in **bold/italics**, deletions in ~~strike through~~):

- A. Cannabis Cultivation Prohibited. **Except as exempted in subsection (C) below**, the cultivation of cannabis and/or the establishment, maintenance or operation of any cannabis cultivation site is prohibited in all zoning districts, planned unit development districts, and specific plan areas in the City.
- B. Establishment or Maintenance of Cannabis Cultivation Site Declared a Public Nuisance. **Except as exempted in subsection (C) below**, the establishment, maintenance, or operation of a cannabis cultivation site as defined in this chapter within the City limits of the City of Garden Grove is declared to be a public nuisance and enforcement action may be taken and penalties assessed pursuant to Title 1, Chapter 1.04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.
- C. **Exemptions. Pursuant and subject to Proposition 64 adopted by the State voters in November 2016, this section shall not**

prohibit the possession, planting, cultivation, harvesting, drying, or processing of up to 6 marijuana plants by persons 21 years of age or older inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

SECTION 10: The City Council hereby finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15061(b)(3).

SECTION 11: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 12: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ___th day of _____ 2017.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, Teresa Pomeroy, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on _____, 2017, with a vote as follows:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

and was passed on _____, 2017, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

CITY CLERK