

ORDINANCE NO. 2863

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING AMENDMENT NO. A-015-2015 AMENDING TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE TO UPDATE THE CITY'S LAND USE REGULATIONS PERTAINING TO CANNABIS DISPENSARIES, DELIVERY, AND CULTIVATION, AND TO CONFIRM THAT USES NOT SPECIFICALLY IDENTIFIED IN A ZONING DISTRICT ARE PROHIBITED IN THAT DISTRICT

City Attorney Summary

This Ordinance approves a text amendment to Title 9 of the Garden Grove Municipal Code to update and revise zoning regulations pertaining to marijuana dispensaries and other commercial cannabis activity. Consistent with the recently enacted Medical Marijuana Regulation and Safety Act, this Ordinance clarifies that 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, continues to be prohibited throughout the City. In addition, the text amendment confirms that any use not specifically identified as a permitted use, conditionally permitted use, or incidental use in any zone or planned unit development area is a prohibited use in that zone or planned unit development area.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, the subject case, initiated by the City of Garden Grove, proposes to amend Title 9 of the Garden Grove Municipal Code to update the City's land use regulations pertaining to cannabis dispensaries, delivery, and cultivation, and to confirm that uses not specifically identified in a zoning district are prohibited in that district;

WHEREAS, following a Public Hearing held on December 3, 2015, the Planning Commission adopted Resolution No. 5853-15 recommending approval of Amendment No. A-015-2015;

WHEREAS, pursuant to a legal notice, a Public Hearing regarding the proposed adoption of this Ordinance was held by the City Council on January 12, 2016, 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 DOES ORDAIN AS FOLLOWS:

SECTION 1: The above recitals are true and correct.

SECTION 2: The City Council finds that the proposed Code Amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (California Code Regulations, Title 14, Section 15000 et seq.).

SECTION 3: Amendment No. A-015-2015 is hereby approved pursuant to the findings set forth herein and the facts and reasons stated in Planning Commission Resolution No. 5853-15, a copy of which is on file in the Office of the City Clerk, and which is incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 4: Section 9.16.020.100 of Title 9 of the Garden Grove Municipal Code is hereby repealed.

SECTION 5: Chapter 9.52 is hereby added to Title 9 of the Garden Grove Municipal Code to read as follows:

CHAPTER 9.52 CANNABIS ACTIVITIES

9.52.010 Purpose, Findings and Definitions

- A. Purpose and Findings. The City Council finds that in order to serve the public health, safety, and welfare of the residents and businesses within the city, the declared purpose of this Chapter is to prohibit marijuana dispensaries and delivery services from locating and operating in the city as stated in this Section.
- B. Definitions. As used in this Chapter, the following terms, words and phrases have the meanings as defined in this Section, unless another meaning is clearly apparent from the context:

"Cannabis" or "Marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code. "Cannabis" includes, but is not limited to, "medical cannabis" as defined in California Business & Professions Code § 19300.5(ag). "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this definition, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis delivery" or "delivery of cannabis" means the transfer of cannabis or cannabis products from a dispensary to any person or entity at a location in the city. "Cannabis delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables individuals to arrange for or facilitate the transfer by a dispensary of cannabis or cannabis products. "Cannabis delivery" includes, but is not limited to, "delivery" as defined in California Business & Professions Code Section 19300.5(m).

"Cannabis dispensary," "marijuana dispensary" or "dispensary" means any association, business, facility, use, establishment, location, cannabis delivery service, cooperative, collective, or provider, whether fixed or mobile, that possesses, processes, manufactures, distributes, makes available, or otherwise facilitates the distribution of cannabis or cannabis products to any person, including, but not limited to, a qualified patient, a person with an identification card, or a primary caregiver. The term "cannabis dispensary" includes, but is not limited to, a business, facility, use or location that engages "commercial cannabis activity" as defined in California Business & Professions Code Section 19300.5(k). The term "cannabis dispensary" shall not include the following facilities, locations or uses to the extent cannabis is dispensed by primary caregivers to qualified patients for medicinal use, as long as such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 and 11362.7: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; or a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Cannabis cultivation" or "cultivation of cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Cannabis cultivation site" means any indoor or outdoor facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

"Cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions and includes, but is not limited to, any "medical cannabis product" or "cannabis product," as defined in California Business & Professions Code § 19300.5(ag), and/or any "edible cannabis product" as defined in California Business and Professions Code Section 19300.5(s).

"Identification card" is a document issued by the State Department of Health Services and/or the County of Orange Health Care Agency which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

"Primary caregiver" is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.

"Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

- C. Use or Activity Prohibited by State Law or Federal Law. Nothing contained in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

9.52.020 Cannabis Dispensaries and Delivery Prohibited

- A. Cannabis Dispensaries and Delivery Prohibited. 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. 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.

9.52.030 Cultivation of Cannabis

- A. Cannabis Cultivation Prohibited. 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. 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.

SECTION 6: SubSection D.7 of Section 9.32.030 of Chapter 9.32 of Title 9 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in ***bold/italics***, deletions in ~~strike-through~~):

- 7. Interpretation of Use.
 - a. Applicability.
 - i. ***Any use not specifically listed as a permitted use, incidental use, or conditional use shall be prohibited; provided, however, that*** ~~Whenever~~ a use has not been specifically listed as a permitted use, ***incidental use, or conditional use*** in a particular zone district, but similar uses are found to exist in that zone, the hearing body shall be responsible for interpreting whether or not the use is permitted in that zone district, and under what conditions.
 - ii. Any use determined to be inconsistent or not similar to other uses shall be required to file an application for an ordinance amendment.
 - b. Required Finding. That the proposed use is:
 - i. Similar in scale and operational characteristics to other uses permitted in that zone;
 - ii. Consistent with the intent of the general plan and the zone district;

iii. Compatible with other permitted uses.

SECTION 7: 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 8: 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 ___ day of _____.

ATTEST:

MAYOR

CITY CLERK

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

I, KATHLEEN BAILOR, 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 January 12, 2016, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, BUI, JONES, PHAN, NGUYEN
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE