

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA HABRA RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONE CHANGE 19-03 FOR AN ORDINANCE MODIFYING LA HABRA MUNICIPAL CODE TITLE 18 (ZONING), CHAPTER 18.22 (“COMMERCIAL CANNABIS ACTIVITY”) TO ALLOW FOR COMMERCIAL NON-STOREFRONT RETAILER CANNABIS FACILITIES AND MODIFICATIONS TO EXISTING DEVELOPMENT STANDARDS AS PER EXHIBIT “A”.

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

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

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

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

WHEREAS, on February 3, 2016, Assembly Bill 21 (Wood) was signed by the Governor, amending provisions of MCRSA pertaining to cultivation licenses by eliminating a March 1, 2016 deadline for local jurisdictions for the promulgation of cultivation regulations or cultivation bans other local jurisdictions would lose the ability to regulate to the State. Assembly Bill 21

also modified language in Health & Safety Code Section 11362.777(g), which pertained to exemptions from licensing requirements for qualified patients and caregivers. The prior language, which specifically stated that local governments retained the right to prohibit cultivation without exception, was revised to state: “Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.”; and

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

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

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

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

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

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

WHEREAS, the City of La Habra wishes to amend provisions of Chapter 18.22 (Commercial Cannabis Activity) of Title 18 (Zoning Code) to allow for the establishment of Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards consistent with MAUCRSA; and,

WHEREAS, it is the purpose and intent of the City to regulate Commercial Non-Storefront Retailer Cannabis Facilities within the City in a manner that is consistent with California law and promotes the health, safety, and general welfare of the residents and businesses within the City, while limiting any negative impacts and while continuing to prohibit all other types of commercial cannabis activities as identified in Chapter 18.22; and,

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

WHEREAS, nothing in the draft Ordinance (Exhibit "A") shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under California state law, as amended, except to the extent otherwise specifically set forth; and,

WHEREAS, the Planning Commission of the City of La Habra, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) find that the proposed modifications to Chapter 18.22 are exempt from the California Environmental Quality Act pursuant to the Business and Professional Code Section 26055(h), which provides that "Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#) does not apply to 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. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#). This subdivision shall become inoperative on July 1, 2021"; and

WHEREAS, the Planning Commission, having considered Zoning Change #19-03 at their regular meeting of February 10, 2020, including review of the staff report and public testimony on the modification of Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards has determined the proposed Ordinance is justified; and,

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the City of La Habra recommends that the City Council approve Zone Change #19-03 for an Ordinance modifying La Habra Municipal Code Title 18 (“Zoning”), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards as per Exhibit “A”.

Section 1. The Planning Commission further finds and determines that the following findings are made:

- a. That the granting of the Zone Change will not be detrimental to the public welfare or injurious to the properties or improvements in such vicinity in which the properties are located.

As presented to the Planning Commission, the draft ordinance could allow for up to two (2) Commercial Non-Storefront Retailer Cannabis Facilities located only in the M-1, M-1 (PUD) and PCI zones and not in other zones with uses that may be negatively impacted by a Commercial Non-Storefront Retailer Cannabis Facility. The draft ordinance retains a distance separation requirement that prohibits a Commercial Non-Storefront Retailer Cannabis Facility from being located too closely to certain sensitive uses. In addition, the draft ordinance continues to make all other cannabis activities, with the exception of uses permitted by Chapter 18.22, prohibited in the City. The ordinance protects the public health and welfare through the regulation of cannabis testing laboratories by imposing regulations that will promote the public welfare and preserve the value of nearby parcels, while also affirmatively prohibiting all other types of commercial cannabis activity not previously approved by the City Council.

- b. That the granting of such Zone Change will not adversely affect the Comprehensive General Plan.

Action on the draft ordinance implements the following General Plan policies: LU 4.1 Development Compatibility because Commercial Non-Storefront Retailer Cannabis Facilities can only be located in the M-1, M-1 PUD and PCI zones and there is a distance requirement from specified sensitive uses; LU 6.3 High-Impact Uses because the draft ordinance only permits a maximum of two (2) Commercial Non-Storefront Retailer Cannabis Facilities; LU 16.1 Diversity of Uses because the commercial cannabis industry is a new industry in California and one that can provide job opportunities for City residents; ED 2.1 Business Attraction because the draft ordinance prioritizes

selection of Commercial Non-Storefront Retailer Cannabis Facilities that will provide fiscal and employment benefits to the City.

- c. That no deed restrictions or easements prohibit reclassification and/or any uses permitted under the proposed property in question.

The Zone Change involves the modification of La Habra Municipal Code Title 18 (Zoning), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities. The subject action does not involve the improvement of any properties and therefore has no effect on deed restrictions or easements on properties.

- d. That these particular properties are more suitable for the uses permitted in the proposed zone than for the uses permitted in the present zone.

The Zone Change involves the modification of La Habra Municipal Code Title 18 (Zoning), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities. The subject action does not involve the improvement of any properties. The draft ordinance would allow for two (2) Commercial Non-Storefront Retailer Cannabis Facilities within M-1, M-1 PUD or PCI zones subject to the standards contained within the Ordinance. There is no proposed development of parcels as part of the proposed Zone Change.

Section 2 The proposed Zone Change to modify the La Habra Municipal Code Title 18 (Zoning), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards was reviewed pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) and determined that the proposed modifications to Chapter 18.22 are exempt from the California Environmental Quality Act pursuant to the Business and Professional Code Section 26055(h), "Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#) does not apply to 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. To qualify for this

exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#). This subdivision shall become inoperative on July 1, 2021”.

Section 3 The Planning Commission finds that all requirements of law for the modification of La Habra Municipal Code Title 18 (Zoning), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards including giving the required public notice, conducting a public hearing, and making all necessary findings have been made. The Planning Commission recommends that the City Council modify La Habra Municipal Code Title 18 (Zoning), Chapter 18.22 (Commercial Cannabis Activity) to allow for Commercial Non-Storefront Retailer Cannabis Facilities and modifications to existing development standards per Exhibit “A”.

Section 4 The Planning Commission Secretary shall certify the adoption of this resolution and transmit a copy thereof to the City Council of the City of La Habra.

Said resolution CARRIED by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Dated: February 10, 2020

ATTEST: _____ APPROVED: _____
Carmen G. Avila, Secretary Michelle Bernier, Chairman