



**INFORMATION RELATED TO THE AGENDA TOPICS PRESENTED  
FOR THE SUBCOMMITTEE'S REVIEW AND CONSIDERATION**

**a. Permitting and regulating the cultivation of marijuana (including taxation)**

Attachment "A" contains a draft ordinance which would permit and regulate cultivation uses; the following reflects the major components of the draft ordinance:

1. Commercial Cannabis Cultivation Business Permit required for use in Agricultural zones
2. Permits shall be valid for one year
3. Permittees shall be required to comply with numerous health, safety and welfare requirements for the purpose of security and land use compatibility (City and state requirements)
4. All other marijuana related uses and activities prohibited on premises of cultivators
5. Permittees shall be subject to all fees and taxes applicable to cultivation uses

**b. Prohibiting marijuana-related activities and uses, to the extent authorized pursuant to state law, or to a lesser extent**

Attachment "B" contains a draft ordinance which generally prohibits marijuana-related activities and uses, to the extent authorized by state law. It may be modified to achieve less restrictive regulations.

The following reflects the major components of the draft ordinance:

1. All commercial marijuana related activities and uses are prohibited, to the extent authorized by state law (including dispensaries, cultivation, manufacturing and distribution)
2. Medical marijuana-related activities and uses are specifically prohibited, to the extent authorized by state law
3. Regarding personal use, outdoor cultivation is prohibited (this may be changed to permit and regulate outdoor cultivation); indoor cultivation is not referenced and thereby is permitted without further local regulation (this may be changed to include regulations for indoor cultivation, but may not be prohibited)
4. The possession, smoking or ingesting of marijuana in public places is prohibited [this would include the possession of edibles in parks]

**c. Delivery of marijuana and marijuana related products—including point to point and the establishment and operation of delivery businesses (including mobile)**

Attachment “C” contains a draft ordinance generally prohibiting delivery (as defined) with exceptions for 1) a primary caregiver who delivers marijuana for the personal medical purposes of that primary caregiver’s qualified patient upon the written or oral recommendation or approval of a physician or 2) a person with an identification card who is transporting medical marijuana for his or her personal use only. The Council considered this draft ordinance on December 7, 2015; however, the Council did not take any action on the draft ordinance, pending the state’s promulgation of related regulations.

**d. Conducting a survey to assess public opinion**

Attachment “D” contains information from the City of Vista.

**e. Response to initiative petition (currently circulating for signatures to qualify for the ballot), if any, which would, among other things, authorize (by conditional use permit) retail sales, cultivation (commercial), manufacturing (of products) and distribution (wholesale) of medical and recreational marijuana**

Attachment “E” contains a summary of the initiative petition prepared by the City Attorney as mandated by the California Elections Code.

**f. State law update—Senate Bill 94 and AB 133**

Senate Bill 94 (SB 94):

As you are aware, several laws recently became effective in California to regulate, permit and prohibit medical and recreational marijuana activities. The Medical Marijuana Regulation and Safety Act (comprised of AB 266, AB 243 and SB 643) (“MMRSA”), addressed medical marijuana; Proposition 64—the Control, Regulate, and Tax Adult use of Marijuana Act (an initiative measure enacted by approval of the voters at the November 2016, statewide general election) (“AUMA”), addresses recreational marijuana (and some aspects of medical); and the latest, effective as of September 2017, Senate Bill 94 (SB 94), referred to as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). MAUCRSA effectively repeals MMRSA and incorporates certain provisions of MMRSA into the licensing provisions of AUMA, thereby setting up a new hybrid regulatory structure which should be easier to navigate.

Assembly Bill 133 (AB 133)

Government Brown signed AB 133 on September 16, 2017 and it goes into effect immediately. The new law removes the requirement that different commercial license type of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises (pursuant to MAUCRSA). By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances, including the possibility that both medical and recreational sales occur at the same location. AB 133 makes numerous additional amendments to MAUCRSA including the following:

- amends the definition of “delivery” to remove the requirement that use of a technology platform by a retailer must be owned and controlled by the retailer
- changes the state-based application process so that applicants who voluntarily submit a valid, unexpired local license will be presumed to be in compliance with “all local ordinances,” unless otherwise notified by the local jurisdiction (the state licensing authority will be required to notify local jurisdictions when an applicant voluntarily submits a valid local license)
- increases the amount of concentrated cannabis a person may possess from four to eight grams before criminal penalties may be triggered
- authorizes patients 18 years or older, holding a valid medical recommendation and medical ID card, and/or primary caregivers, to enter licensed cannabis businesses that hold both adult use and medical licenses
- clarifies, for purposes of tax collection, only finished, harvested products that have met all quality assurance and testing requirements are subject to the state cultivation tax

**ORDINANCE NO. XXXX-XX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS ADDING CHAPTER XXXX TO THE MUNICIPAL CODE TO PERMIT AND REGULATE COMMERCIAL CANNABIS CULTIVATION IN THE CITY OF ENCINITAS**

**WHEREAS**, in 1996, the California electorate approved Proposition 215, the Compassionate Use Act of 1996, which allows a patient, with a doctor's recommendation, to use cannabis for medical purposes without the fear of prosecution or arrest;

**WHEREAS**, in 2003, the California legislature passed Senate Bill 420 (Medical Marijuana Program Act) which amended the Health and Safety Code to permit the establishment of medical cannabis dispensaries for the distribution of cannabis for medical purposes;

**WHEREAS**, in 2005 the California Board of Equalization began issuing seller's permits for sales consisting of medical cannabis;

**WHEREAS**, in 2008 the California Attorney General issued guidelines for the security and non-diversion of cannabis grown for medical use;

**WHEREAS**, in 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA") further amended in 2016 as the Medical Cannabis Regulation and Safety Act ("MCRSA"), which established regulations and a State licensing system for medical cannabis cultivation, manufacturing, delivery, and dispensing;

**WHEREAS**, in 2016 the voters of the State of California approved and passed Proposition 64 also known as the Adult Use of Marijuana Act ("AUMA");

**WHEREAS**, state law provides that cities may prohibit or permit and regulate commercial cultivation;

**WHEREAS**, the City Council of the City of Encinitas intends that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law;

**WHEREAS**, the City Council finds that the regulation of commercial cannabis cultivation is necessary to protect the public health, safety, and welfare by mitigating the adverse secondary effects from the operations of these uses;

**WHEREAS**, the City of Encinitas has a compelling interest in ensuring that cannabis is not cultivated in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, and in preserving the peace and quiet of the neighborhoods in which these uses may operate; and

**WHEREAS**, the proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the establishment of regulations for commercial cannabis businesses do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the “general rule exemption” (Section 15061(b)(3) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS DOES ORDAIN AS FOLLOWS:**

**SECTION 1.**

The City of Encinitas Municipal Code is hereby amended to add Chapter XX to read as follows.

**Chapter XX – REGULATION OF COMMERCIAL CANNABIS CULTIVATION ACTIVITIES – PERMITS REQUIRED**

**XX.010 Purpose and Intent**

It is the purpose and intent of this section to regulate commercial cannabis cultivation business activities in order to ensure the health, safety and welfare of the residents of the City of Encinitas by establishing regulations necessary to obtain and maintain a regulatory permit. Any commercial cannabis cultivation business must qualify for and receive a Commercial Cannabis Cultivation Permit from the City of Encinitas as provided by this Ordinance before commencing with any commercial cannabis cultivation activity. Any commercial cannabis cultivation activities being conducted without a Commercial Cannabis Cultivation Permit is in violation of this Ordinance. The regulations in this Chapter do not interfere with the right to use cannabis or medical cannabis as authorized under State Law, nor do they criminalize the possession of cannabis or medical cannabis as authorized under State Law. All commercial cannabis cultivation businesses shall at all times be in compliance with current State Law.

**XX.020 Definitions**

The definitions are incorporated herein as fully set forth and are applicable to this Ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

**“Applicant”** means a person who is required to file an application for a permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

**“Cannabis” or “Marijuana”** means all parts of the 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 the California Health and Safety Code. "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 chapter, "cannabis" does not mean industrial hemp as that term is defined by the California Food and Agricultural Code or the California Health and Safety Code.

**“Cannabis waste”** means waste that is not hazardous waste, as defined in Public Resources Code, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State of California.

**“Canopy”** means all of the following:

- (1) The designated area(s) at a licensed premises that will contain mature plants at any point in time;
- (2) Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;
- (3) Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and
- (4) If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

**“City”** means the City of Encinitas.

**“Commercial cannabis cultivation permit”** means a permit issued by the City pursuant to this Ordinance to a commercial cannabis cultivation business.

**“Commercial vehicle”** means a vehicle as defined in the Vehicle Code.

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

**“Delivery”** means the commercial transfer of marijuana or marijuana products to a customer from a duly authorized cultivator pursuant to this chapter.

**“Indoor cultivation”** means the cultivation of cannabis within a structure using artificial light, at a rate greater than 25 watts per square foot.

**“License”** means a permit issue a license by the State of California, or one of its departments or divisions, under the Medical Marijuana Regulation and Safety Act to engage in commercial cannabis activity.

**“Marijuana”** see “Cannabis”

**“Medical cannabis goods”** means medical cannabis, including dried flower, and manufactured medical cannabis products.

**“Medical cannabis patient”** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

**“Mixed-light cultivation”** means the cultivation of cannabis using light deprivation and/or artificial lighting below a rate of 25 watts per square foot.

**“Nursery”** means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

**“Outdoor cultivation”** means the cultivation of cannabis without the use of light deprivation and/or artificial lighting in the canopy area. Supplemental low intensity lighting is permissible only to maintain immature plants as a source for propagation.

**“Ownership interest”** means an interest held by a person who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 10% or more.

**“Patient or qualified patient”** shall have the meaning given that term by California Health and Safety Code.

**“Pest”** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

**“Premises”** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity. The premises shall be a contiguous area and may only be occupied by one licensee.

**“Proprietary private security officer”** has the same meaning as that term as defined in the State of California Business and Professions Code.

**“Publicly owned land”** means any building or real property that is owned by a city, county, state, federal, or other government entity.

**“Residential area”** is an area that is within 600 feet of any single-family or multifamily residence, other than commercial hotels, motels, and similar establishments for temporary lodging.

**“Security monitoring”** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

**“State”** means the State of California.

**“Sublet”** means to lease or rent all or part of a leased or rented property.

**“Transport”** means the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis cultivation activity authorized by the Medical Marijuana Regulation and Safety Act.

**“Vehicle alarm system”** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

### **XX.030 Compliance with State and local licensing requirements**

Any commercial cultivation facility as defined by the State of California or the City of Encinitas shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the cultivation facility as defined by the State of California and allowed by the City of Encinitas are in compliance with State and local law, and are established to mitigate any adverse secondary effects from its operations.

Commercial Cannabis cultivation business operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

### **XX.040 General Provisions for Commercial Cannabis Activities in the City of Encinitas**

#### **A. Commercial Cannabis Business Permit Required — Restricted to Agricultural Zones**

1. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, in or upon any premises within the City of Encinitas any cannabis cultivation business without a Commercial Cannabis Cultivation Permit. A commercial cannabis cultivation business shall register and obtain a Commercial Cannabis Cultivation Permit from the City of Encinitas prior to operation. The Commercial Cannabis Cultivation Permit applicant shall pay an annual non-refundable regulatory fee in an amount established by the City Council.
2. A copy of the Commercial Cannabis Cultivation Permit shall be displayed at all times in a place visible to the public.
3. A Commercial Cannabis Cultivation Permit shall be valid for one (1) year, unless sooner revoked. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.
4. A Commercial Cannabis Cultivation Permit shall not be issued to an individual or a business entity associated with an individual, who has violated State law provisions related to the commercial cultivation of cannabis within the last 3 years. Violation shall mean conviction of, or guilty plea.
5. The Commercial Cannabis Cultivation Permit shall be issued to the specific person or persons listed on the Permit Application.

6. Commercial Cannabis Cultivation Permits shall only be issued for such operations in the Agricultural Zones.
7. A Commercial Cannabis Cultivation Permit does not transfer with the land and does not transfer with the transfer of the property.

## **B. Maintenance of Records and Reporting**

1. All records for the commercial cannabis cultivation business must be maintained and available to the City of Encinitas for at least 3 years. Records must be produced within 24 hours of a request by an authorized City of Encinitas representative:
2. The business shall obtain and maintain a valid Permit from the State to conduct operations.
3. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations section 1968.
4. Personnel records, including each employee's full name, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.
5. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.
6. Contracts with other licensees regarding commercial cannabis cultivation activity.
7. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.
8. Proof of building ownership or landlord letter acknowledging business type.
9. Proof of insurance.

## **C. Operational Standards for Commercial Cannabis Cultivation Business Activities — General**

1. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.
2. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet.

3. All controlled access areas, security rooms and all points of ingress/egress to limited access areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) days, and be available for inspection at any time.
4. Recorded images shall clearly and accurately display the time and date. Recordings shall be maintained, unaltered, for a period of not less than thirty (30) days and shall be stored digitally. The City of Encinitas or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings.
5. All commercial cannabis cultivation businesses must create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business must keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.
6. No cannabis cultivation business may be located within a XXXX foot radius from a school, day care home, recreational center, youth center, library or public park as required by the Health and Safety Code.
7. No alteration of the licensed premises is allowed without written prior permission by the City of Encinitas and payment of any additional fees required by the City.
8. All commercial cannabis cultivation businesses must provide adequate off-street parking to service customers without causing negative impacts as determined by the Department of Planning and Development Services.
9. The commercial cannabis cultivation business must provide adequate handicapped parking.
10. The commercial cannabis cultivation business must provide adequate interior and exterior lighting for safety and security.
11. The commercial cannabis cultivation business must minimize nuisances such as trash, litter, and graffiti.
12. Restrooms shall not be accessible to the public.
13. All cash shall be well-secured and shall be managed such that no more than \$XX.XX is stored on the premise at any time.
14. All commercial cannabis cultivation facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-

way, or within any other unit located within the same building as the facility, if the use occupies only a portion of a building.

15. A commercial cannabis cultivation business entity that remains inoperative for more than thirty (30) days shall be deemed “abandoned” and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Department of Planning and Development Services Director or his or her designee.
16. The cannabis cultivation business must comply with all State regulations regarding testing, labeling and storage of all cannabis products.
17. The cannabis business must meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with cultivating cannabis.
18. The cannabis cultivation business must conform to all State and local regulations regarding water usage.
19. The cannabis cultivation businesses electrical and plumbing must comply with State and local regulations.
20. The cannabis business must comply with all State insurance and security bond regulations.
21. All agents, officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2” X 2” in size, issued by the licensee. The badge, at a minimum, shall include the licensee’s “doing business as” name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee’s face.
22. The commercial cannabis cultivation business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.
23. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system.
24. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks.
25. All persons hiring employees to engage in commercial cannabis cultivation activities shall document compliance with the following employee safety practices:
  - a. Emergency action response planning as necessary
  - b. Employee accident reporting and investigation policies
  - c. Fire prevention

- d. Hazard communication policies, including maintenance of material safety data sheets.
- e. Materials storage and handling policies
- f. Personal protective equipment policies
- g. Operation manager contacts
- h. Emergency responder contacts
- i. Poison control contacts

#### **D. Limitations on the City's Liability**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Cultivation Business Permit pursuant to this chapter. As a condition of approval of a Commercial Cannabis Cultivation Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries, or liabilities of any kind associated with the registration or operation of the cannabis cultivation facility or the prosecution of the applicant or licensee or its members for violation of federal or State laws;
2. Maintain insurance in the amounts and of the types that are acceptable to the Director of Development Services or designee;
3. Name the City as an additionally insured on all City required insurance policies;
4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Cultivation Business Permit; and
5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Cultivation Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **XX.050 Additional Regulations for Commercial Cultivation — Specific**

1. Only indoor or mixed light cultivation is allowed for any commercial cannabis cultivation facility in the City.
2. All commercial cannabis cultivation facilities must be constructed and maintained to be secure to prevent unlawful entry and/or theft, and have secure, lockable access.
3. All commercial cannabis cultivation facilities must have opaque walls and windows, or be surrounded by 6-foot high opaque fencing to prevent visual access to cannabis cultivation operations.
4. At all times the marijuana cultivation facility is open, the dispensary shall provide at least one security guard who is licensed and possesses a valid Department of Consumer Affairs "security guard card".
5. Security guards are permitted, but not mandated, to carry firearms.

6. All State water and power requirements for commercial cannabis cultivators are the minimum standard for all commercial cannabis cultivators in the City of Encinitas. Providing adequate power and water are solely the responsibility of the commercial cannabis cultivation entity.
7. Multiple cultivation licensees may be located on the same property, as established by an assessor's parcel number, if each licensed premises has a unique entrance and immovable physical barriers between uniquely licensed premises.
8. The total licensed canopy for one person cannot exceed 4 acres.
9. All non-manufactured cannabis products must meet or exceed all State regulations for testing, packaging and labeling.
10. Licensed cultivators, other than nursery licensees, shall only propagate immature cannabis plants for planting at their licensed premises in designate propagation areas. Any cannabis plants in the propagation area(s) are prohibited from flowering.
11. Licensees, including those persons issued multiple cultivation licenses are prohibited from commingling cannabis from other licensed cultivation premises.
12. All commercial cannabis indoor cultivators must meet or exceed the environmental protection measures in the State regulations.
13. Nurseries producing immature plants for distribution may maintain a research and development area for the cultivation of mature plants. All mature plants shall be tagged with a unique identifier as required by State law. Licensees shall only conduct research and development on the premises in designated areas identified in their Cultivation Plan approved by the City.
14. The use of generators is prohibited at all commercial cultivators except for temporary use in the event of a power outage or an emergency.
15. Commercial Cannabis Cultivators shall maintain the full name, address and telephone number(s) and State of California commercial cannabis license number of all purchasers to whom the business provides cannabis for a period of not less than 3 years.
16. Exterior signage shall be limited to one wall sign not to exceed ten square feet in area and may not be externally or internally illuminated. Interior signage or advertising may not be visible from the exterior.
17. The following information shall be provided on a sign posted in a conspicuous location inside the commercial cannabis business: Smoking, ingesting or consuming marijuana on this property or within 100 feet of the business is prohibited.
18. No one under the age of 21 shall be allowed to enter the cultivation facility without prior written permission of the City.
19. Adequate signage must clearly state that the City of Encinitas has not tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed from this location.

20. Shipments of cannabis goods may only be accepted between the hours of 6:00 a.m. and 9:00 p.m. Pacific Time.
21. There shall be no on-site consumption of cannabis.
22. Cannabis accessories including pipes, vaporizers, bongs, etc. shall not be allowed on the cultivation cannabis business premises.
23. No cannabis product shall be visible from the exterior of the business.
24. All required labelling shall be maintained on all product, as required by State law, at all times.
25. All lights used for the cultivation of cannabis shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.
26. Commercial cannabis cultivation facilities shall be operated in a manner that ensures neighborhood compatibility, and shall take all steps necessary to ensure that they do not create neighborhood disturbances.

#### **XX.060 Enforcement**

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, officer or other person acting for or employed by a licensee within the scope of his or her employment or office, shall be deemed the act, omission, or failure of the licensee.
2. A licensed Commercial Cannabis Cultivation Business must notify the City of Encinitas of discovery of any of the following situations:
  - a. A discrepancy of more than \$1,000 in inventory over a period of 24 hours or \$3,000 over period of 7 days.
  - b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the dispensary.
  - c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.
  - d. Any other reason to suspect any other breach of security.
3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Cultivation Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and State laws for any violations committed by the cannabis business and persons related or associated with the cannabis business.

4. City Code Enforcement Officials may enter and inspect the location of any commercial cannabis cultivation business between the normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis cultivation business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with his or her violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

### **XX.070 Prohibited Activities**

Excepting commercial cultivation businesses duly licensed pursuant to this Chapter and State Law, no cannabis-related activities or uses, including but not limited to manufacturing, retail, testing, distribution or transportation businesses shall be licensed by the City of Encinitas.

### **XX.080 Fees and Taxes**

All Commercial Cannabis Cultivation Business operators shall pay applicable fees and taxes, which may include one or more of the following.

1. Application Fees. The Commercial Cannabis Cultivation Permit Operator shall submit a non-refundable fee to cover the cost of processing an application for the commercial cannabis cultivation business.
2. Application Renewal Fees.
3. Business Registration Fee. The Business Owner shall at all times maintain a current and valid business registration and pay all related fees required by the Encinitas Municipal Code.
4. Commercial Cannabis Cultivation Annual Business Permit Regulatory Fee. The Business Owner shall pay an annual regulatory fee ("Regulatory Fee") to cover the costs of anticipated monitoring and enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of monitoring and enforcement associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.
5. All required taxes including, but not limited to, sales, use, business, and payroll.

## **XX.090 Severability**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any 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 passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

## **SECTION 2: Effective Date**

After its adoption, this Ordinance shall be in full force and effect as provided by law.

**ORDINANCE NO. XXXX-XX**

**AN ORDINANCE OF THE CITY COUNCIL OF CITY OF ENCINITAS ADDING CHAPTER XX TO THE ENCINITAS MUNICIPAL CODE TO EXPRESSLY PROHIBIT COMMERCIAL AND PERSONAL MARIJUANA RELATED ACTIVITIES AND USES TO THE EXTENT PERMISSIBLE PURSUANT TO STATE LAW; AND, THEREBY, PREVENT AND INVALIDATE ANY STATE LICENSE OR AUTHORIZATION REGARDING THE SAME**

**WHEREAS**, in November 2016, California voters approved Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), which, under state and local law, among other things, authorizes persons 21 years of age and older to (1) smoke, ingest or otherwise use nonmedical marijuana and marijuana related products; (2) purchase, possess, transport, obtain or give away without compensation to persons age 21 and older, up to 28.5 grams of marijuana or 8 grams of concentrated marijuana; and (3) plant, cultivate and process up to six living marijuana plants for personal use;

**WHEREAS**, to regulate commercial use of marijuana, AUMA (pursuant to the Business and Professions Code) grants state agencies “the exclusive power to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the sale, cultivation, manufacturing, distribution, transportation (delivery), storage, and testing of marijuana;

**WHEREAS**, AUMA provides that such state agencies shall promulgate rules and regulations and begin issuing licenses by January 1, 2018;

**WHEREAS**, AUMA provides that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting the same in compliance with state law;

**WHEREAS**, AUMA authorizes cities to completely prohibit outdoor cultivation on the grounds of a private residence (until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law);”

**WHEREAS**, AUMA authorizes cities to completely prohibit the establishment or operation of any marijuana business that may be licensed by the State, within its jurisdiction, including marijuana sales, cultivation, manufacturing, distribution, transportation (delivery), storage, and testing of marijuana;

**WHEREAS**, absent appropriate local regulations pursuant to AUMA, State regulations will control;

**WHEREAS**, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4<sup>th</sup> 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses;

**WHEREAS**, on June 27, 2017, Senate Bill 94 (SB 94), a budget trailer bill known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), became effective immediately and creates a single regulatory system for medical and nonmedical commercial marijuana-related businesses. MAUCRSA repealed the Medical Cannabis Regulation and

Safety Act (MCRSA) adopted in 2015, and incorporated certain provisions from MCRSA into the licensing provisions of AUMA to create one consolidated act known as MAUCRSA;

**WHEREAS**, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana, are unlawful and subject to federal prosecution notwithstanding a claimed medical need;

**WHEREAS**, MAUCRSA authorizes cities to continue prohibiting or regulating commercial operations, activities and uses relating to marijuana, including, but not limited to, prohibiting medical and nonmedical businesses; enacting and enforcing reasonable regulations relating to the personal cultivation and processing of marijuana indoors, and prohibiting the personal cultivation and processing of marijuana outdoors; and prohibiting the possession, smoking and ingestion of marijuana and marijuana products in public places, places where smoking is prohibited under LMMC and otherwise, and within buildings owned, leased or occupied by a local government agency, among other places;

**WHEREAS**, the City has relied upon the application of permissive zoning to prohibit land uses related to marijuana, but to date has not regulated the personal cultivation and processing of marijuana;

**WHEREAS**, the City currently prohibits smoking in certain public places and other places properly designated as no smoking areas;

**WHEREAS**, the City expressly desires to prohibit each and every marijuana-related use and activity, including marijuana sales, cultivation, manufacturing, distribution, transportation (delivery), storage, and testing of marijuana; to the extent authorized by California law;

**WHEREAS**, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council of the City of Encinitas hereby finds and determines that all of the above Recitals are true and correct and incorporates the same into this Ordinance as if fully set forth herein.

**SECTION 2.** A new Chapter \_\_\_\_ is hereby added to the Encinitas Municipal Code to read as follows:

“Marijuana-Related Activities and Uses

XXX.010 Purpose and Intent.  
XXX.020 Definitions.

XXX.030 Commercial Use.  
XXX.040 Medical Use.  
XXX.050 Personal Use.  
XXX.060 Penalty for Violations.

XXX.010 Purpose and Intent.

The purpose and intent of this Chapter is to regulate commercial, medical and personal marijuana-related activities and uses; and, expressly prohibit each and every marijuana-related use and activity, including marijuana sales, cultivation, manufacturing, distribution, transportation (delivery), storage, and testing of marijuana, to the extent authorized by California law. Nothing in this Chapter shall be interpreted to preempt or render inapplicable any provision of federal or state law.

XXX.020—Definitions.

For purposes of this Chapter, the following definitions apply:

‘Commercial marijuana activity’ includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.

‘Cultivation’ means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

‘Delivery’ means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

‘Distribution’ means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

‘Licensee’ means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

‘Manufacture’ means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

‘Marijuana’ means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; 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. It does not include:

- (i) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
- (ii) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

‘Marijuana accessories’ means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing,

harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

'Marijuana products' means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or tropical product containing marijuana or concentrated cannabis and other ingredients.

'Person' includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

'Private residence' means residential unit such as a house, an apartment unit, a mobile home, or other similar dwelling.

'Sale' includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana products was purchased.

Any term defined in this Section also means that same term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

#### XXX.030—Commercial Use.

A. The establishment or operation of any business of commercial marijuana activity shall be prohibited to the extent permitted pursuant to California law. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations include, but are not limited to:

1. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
2. The cultivation of marijuana;
3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
4. Any other business that may be licensed by the State or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

#### XXX.040—Medical Use.

Any medical marijuana-related activities and uses shall be prohibited in the City to the extent permissible pursuant to State law. No other use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for

medical marijuana-related activities and uses in the City, and no person shall otherwise engage in or establish such activity and use.

XXX.050—Personal Use.

A. For purposes of this subsection, personal use, possession, purchase, transport, or dissemination of marijuana shall be prohibited in the City to extent that such prohibition is authorized pursuant to California law.

B. It shall be prohibited for any person to plant, cultivate, harvest, dry, or process marijuana plants outdoors in the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

C. It shall be prohibited for any person to possess, smoke or ingest marijuana in public places (including places open to the general public) and in places where smoking is prohibited pursuant to this Code.

D. [*Intentionally left blank*]

XXX.060—Penalty for Violations

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Chapter. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory in this Chapter, shall be a misdemeanor or infraction, at the discretion of the City Attorney. In addition to the penalties provided in this Chapter, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is declared a public nuisance and may be abated as provided in this Code and/or under State law.”

SECTION 3. CEQA.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Diego in accordance with CEQA guidelines

SECTION 4. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is 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, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Restatement of Existing Law.

Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of Ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

SECTION 6. This Ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the *Coast News* within 15 days of its adoption.

INTRODUCED AND READ at a Regular meeting of the City Council of the City of Encinitas, California, held the \_\_\_\_ day of \_\_\_\_\_ 2017, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the \_\_\_\_ day of \_\_\_\_\_ 2017, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Catherine Blakespear, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Hollywood, City Clerk

CERTIFICATE OF CITY CLERK

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify the foregoing to be a true and exact copy of Ordinance No. 2017-\_\_, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

Kathy Hollywood  
, City Clerk

(SEAL OF CITY)

ORDINANCE 2015-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS  
ADDING CHAPTER 9.46 TO THE CITY OF ENCINITAS MUNICIPAL CODE  
FOR THE PURPOSE OF EXPRESSLY PROHIBITING MOBILE DISPENSING  
AND DELIVERY OF MARIJUANA

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WHEREAS, this Ordinance is enacted pursuant to the powers vested in the City of Encinitas (“City”) pursuant to Article XI, Sections 5 and 7 of the California Constitution;

WHEREAS, this Ordinance is consistent with the provisions of Article 9 of Chapter 3.5 of the California Business and Professions Code as enacted by Assembly Bill No. 266 (Chapter 689, Statutes of 2015);

WHEREAS, this City currently prohibits marijuana-related land uses within the City, including medical marijuana businesses and related uses (via permissive zoning);

Whereas, AB 266 provides that deliveries of marijuana (as defined and otherwise qualified) can only be made in a city that does not expressly prohibit such activity by local ordinance; and

WHEREAS, this City intends to adopt this Ordinance for the purpose of expressly prohibiting mobile marijuana dispensaries and the delivery of medical marijuana within the City.

The City Council of the City of Encinitas, California, does ordain that the Encinitas Municipal Code is hereby amended as follows:

SECTION 1. A new Chapter 9.46 is hereby added to the Encinitas Municipal Code to read as follows:

“Chapter 9.46

MOBILE DISPENSING AND DELIVERY OF MARIJUANA

Section 9.46.010	Definitions.
Section 9.46.020	Mobile Dispensaries – Prohibited.
Section 9.46.030	Delivery of Marijuana – Prohibited.
Section 9.46.040	Carriage of Marijuana.
Section 9.46.050	Penalty.
Section 9.46.060	Severability.

Section 9.46.010 – Definitions.

Whenever the following words or terms are used in this Chapter, they shall have the meaning ascribed below:

‘Delivery’ means the transport or transfer, by any means, of marijuana from any marijuana business, regardless of where the marijuana business is located, to any person or place within the City of Encinitas except for Statutory Delivery.

'Marijuana' means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term 'marijuana' shall also include 'medical marijuana' as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

'Marijuana Business' means a medical marijuana business (whether undertaken for profit or not-for-profit), dispensary, association, collective, cooperative, provider, person, or similar individual, entity or organization which sells (whether wholesale or retail), provides, conveys, distributes, delivers, dispatches, cultivates, stores, processes or prepares medical marijuana (or otherwise engages in commercial cannabis activity);

'Mobile Dispensary' means (i) any conveyance, powered or unpowered, licensed or unlicensed, manned or unmanned, from which marijuana is offered for viewing; sampling; concurrent or subsequent sale; or is given away; provided; distributed or dispensed; and which (ii) is owned, leased, operated, used, maintained or controlled by a medical marijuana business.

'Operating a Mobile Dispensary' means parking, stopping, idling, or standing on public or private property for the purpose of permitting marijuana to be offered for viewing; sampling; concurrent or subsequent sale; or to be given away; provided; distributed or dispensed.

'Qualified Patient', 'Primary Caregiver' and 'Person with an Identification Card' have the same meanings as those terms are defined in Section 11362.7 of the California Health and Safety Code.

'Statutory Delivery' means delivery as defined in Section 19300.5(m) of the California Business and Professions Code as enacted by Assembly Bill No. 266 (Chapter 689, Statutes of 2015).

#### Section 9.46.020 - Mobile Dispensaries – Prohibited.

A. Operating a mobile dispensary, or engaging in any action in furtherance of that purpose, shall be prohibited in the City of Encinitas.

B. In addition to the penalties set forth in this Chapter, operation of any mobile dispensary within the City in violation of the provisions of this Chapter is hereby declared a public nuisance and shall be subject to abatement pursuant to all available remedies.

#### Section 9.46.030 - Delivery of Marijuana – Prohibited.

A. Statutory delivery, or engaging in any action in furtherance of that purpose, shall be prohibited in the City of Encinitas.

B. Delivery, or engaging in any action in furtherance of that purpose, shall be prohibited in the City of Encinitas; provided, however, that this subsection B shall not apply to (i) a primary caregiver who delivers marijuana for the personal medical purposes of that primary caregiver's qualified patient upon the written or oral recommendation or approval of a physician,

or (ii) to a person with an identification card who is transporting marijuana for his or her personal use only.

Section 9.46.040 -Carriage of Marijuana.

Nothing in this Chapter shall prohibit the carriage of medical marijuana or its derivative products on public roads in the City of Encinitas by a licensee pursuant to Section 19340(f) of the California Business and Professions Code.

Section 9.46.050 - Penalty

A. Any person who violates the provisions of this Chapter shall be guilty of a misdemeanor. There shall be a separate misdemeanor penalty for each separate and distinct incident for which a violation occurs.

B. Notwithstanding the foregoing, the City may also impose administrative penalties pursuant to Chapter 1.08 of this Code and seek injunctive relief and civil penalties in the superior court for violations of this Chapter. The remedies provided for in this Chapter shall be cumulative and not exclusive of any other remedies available under any other federal, state, or local laws.

9.46.060 - Severability

If any section, sentence of clause or this Chapter is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.”

SECTION 2: This Ordinance shall take effect and be in force thirty (30) days after its passage and 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 published in the City of Encinitas.

INTRODUCED at a Regular meeting of the City Council of the City of Encinitas, California, held the 16th day of December 2015, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the \_\_\_\_ day of \_\_\_\_\_ 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
KRISTIN GASPAR, Mayor

ATTEST:

\_\_\_\_\_  
KATHY HOLLYWOOD, City Clerk

CERTIFICATE OF CITY CLERK

I, KATHY HOLLYWOOD, City Clerk of the City of Encinitas, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2015-20, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

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KATHY HOLLYWOOD, City Clerk

(SEAL OF CITY)

**Laurie Winter**

**From:** Tony Winney <twinney@ci.vista.ca.us>  
**Sent:** Monday, August 07, 2017 1:05 PM  
**To:** John Conley; Laurie Winter  
**Subject:** RE: Prop 64 related survey  
**Attachments:** Richard Bernard.vcf

Hi Laurie. We contracted with Fairbank, Maslin, Maullin, Metz & Associates (FM3). They are a LA survey firm which has done polling for many CA cities on marijuana. Their contact information is attached, if you're interested. It cost approx. \$30,000. We contracted for a sample size of 400 that would get us a margin of error of +/- 4.9 percent, but there was so much interest in the topic that we received many more responses than 400 resulting in a lower margin of error.

The survey took about 1 month including the actual survey, analysis, and presentations.

Please let me know if you have any questions. Thanks.

Tony



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**TONY WINNEY**  
City of Vista | Assistant to the City Manager  
200 Civic Center Drive | Vista, CA 92084  
P: (760) 643-5208  
E: [twinney@cityofvista.com](mailto:twinney@cityofvista.com)  
[Website](#) | [Twitter](#) | [Facebook](#)



**From:** John Conley  
**Sent:** Monday, August 7, 2017 12:22 PM  
**To:** Laurie Winter <[lwinter@encinitasca.gov](mailto:lwinter@encinitasca.gov)>  
**Cc:** Tony Winney <[twinney@ci.vista.ca.us](mailto:twinney@ci.vista.ca.us)>  
**Subject:** RE: Prop 64 related survey

Hi Laurie,

CITY OF ENCINITAS  
CITY CLERK

2017 AUG 22 PM 4:19

BALLOT TITLE AND SUMMARY

AN ORDINANCE OF THE CITY OF ENCINITAS AUTHORIZING (IN SPECIFIED ZONES BY CONDITIONAL USE PERMIT) RETAIL SALES, CULTIVATION (COMMERCIAL), MANUFACTURING (PRODUCTS) AND DISTRIBUTION (WHOLESALE) OF CANNABIS (MARIJUANA) FOR MEDICINAL AND RECREATIONAL PURPOSES, AND REGULATING PERSONAL USE CULTIVATION, SUBJECT TO CERTAIN RESTRICTIONS AND REGULATIONS

The Encinitas Municipal Code ("Code") and related laws prohibit retail sales, cultivation (commercial), manufacturing (products) and distribution (wholesale) of cannabis (marijuana) for medicinal and recreational purposes. This citizen initiative measure, if approved by the voters of Encinitas (and California Coastal Commission in Coastal zone), would amend the Code to authorize the above-referenced activities (defined in California Business and Professions Code) in specified zones by conditional use permit ("CUP") subject to certain restrictions and regulations generally including:

- Specified lighting, signage and security (security guard on premises)
- CUP expires 5 years after issuance; and, may be revoked or suspended due to loitering, smell or noise complaints, or noncompliance with other applicable restrictions or regulations
- No felon shall operate, manage, control or own such an activity

Retailers (sales and delivery) would be permitted by CUP in 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-GC1), and in the Mixed Use Land Use Zones ER-MU1 and ER-MU2. Restrictions and regulations specifically pertaining to retailers include:

- 1000 foot separation from sensitive uses (day care center, playground, school or other retailer)
- Restricted operating hours (7:00 a.m. to 9:00 p.m. seven days a week)
- Security guard on premises during business hours
- Maximum of one retailer per 15,000 residents permitted, except City Council may authorize additional retailers

Cultivators would be permitted by CUP in agricultural zones. Restrictions and regulations specifically pertaining to cultivators include:

- All cultivation shall occur within the interior of a building or greenhouse
- Plants cultivated shall be subject to State laws, and records of compliance made available to the City
- No visual evidence of cultivation (within or outside the facility) from a public right-of-way
- Mitigation of “public nuisance” conditions (as defined by California Civil Code Section 3480), or otherwise be subject to penalty, or suspension or revocation of the CUP
- No public access or sales on premises

Manufacturers would be permitted by CUP in Business Parks (BP) and in Light Industrial (LI) zones. Restrictions and regulations specifically pertaining to manufacturers include:

- Extraction of cannabis concentrates with butane or other flammable gases shall be prohibited
- All manufacturing shall comply with regulations promulgated by the California Department of Public Health
- No public access or sales on premises

Distributors would be permitted by CUP in Business Parks (BP) and Light Industrial (LI) zones. Restrictions and regulations specifically pertaining to distributors include:

- No public access or sales on premises

This initiative measure would also regulate personal use cultivation of cannabis (medical and recreational) by, among other things, requiring the same to comply with state and local laws, and prohibiting additional City-required permission or registration.