

## ORDINANCE 2021-04

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, on May 20, 2021, the Encinitas Planning Commission held a duly-noticed public hearing concerning the proposed land use and zoning regulations governing cannabis activity, and recommended that the City Council adopt the proposed Ordinance No. 2021-04 and direct staff to conduct public outreach and prepare maps showing potential locations for each type of use, prepare an odor management ordinance, and develop procedures for filing complaints regarding pesticide drift, odor, or other code enforcement issues;

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

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

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

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

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

**WHEREAS**, on June 16, 2021, the City Council conducted a duly noticed public hearing for the purpose of considering amendments to Titles 9 and 30 of the EMC, and amendments to the Downtown Encinitas, North 101 Corridor, Encinitas Ranch, and Cardiff-by-the-Sea Specific Plans, and amendments to the Local Coastal Plan.

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

**SECTION 1:** The foregoing recitals are true and correct.

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

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

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

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

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

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

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

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

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

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

**SECTION 12:** If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the

remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

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

**INTRODUCED** at a regular meeting of the City Council of the City of Encinitas, California, held on this 16<sup>th</sup> day of June, 2021; and


**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Encinitas, California, held on the 11<sup>th</sup> day of August, 2021.

  
\_\_\_\_\_  
Catherine S. Blakespear, Mayor

ATTEST:

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

APPROVED AS TO FORM:

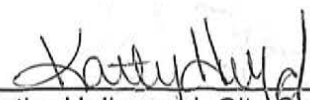
  
\_\_\_\_\_  
Leslie E. Devaney, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on this 16<sup>th</sup> day of June, 2021 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on this 11<sup>th</sup> day of August, 2021 by the following vote, to wit:

AYES: Blakespear, Hinze, Kranz, Lyndes, Mosca  
NOES: None  
ABSENT: None  
ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 25 day of August, 2021.

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

**EXHIBIT 1**

**Amendment – EMC Ch. 30.09**

**Title 30 – Zoning**

**Chapter 30.09 – Zoning Use Matrix**

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

USES	ZONES															
	RR; RR- 1; RR- 2	RS- 11; R-3; R-5; R-8	R- 11; R- 15	R- 20; R- 25	R- 30 OL	MHP	OP	LC	GC	VSC	LI	BP	P/SP	ER/ OS	L-LC	L-VSC
<u>Cannabis -Retailer</u> <sup>42</sup>	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X	X
<u>Cannabis- Commerci al Cultivation</u> <sup>42</sup>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<u>Cannabis- Product Manufactu ring</u> <sup>42</sup>	X	X	X	X	X	X	X	X	X	X	P	P	X	X	X	X
<u>Cannabis- Kitchen</u> <sup>42</sup>	X	X	X	X	X	X	X	X	P	X	P	P	X	X	X	X
<u>Cannabis- Distributio n</u> <sup>42</sup>	X	X	X	X	X	X	X	X	X	X	P	P	X	X	X	X
<u>Industrial Hemp</u> <sup>42</sup>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

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

**EXHIBIT 2**

**Amendment – Encinitas Downtown Specific Plan**

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

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

**3.2.3 Mixed Use Zones**

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

**1. Permitted Uses:**

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

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

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

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

**1. Permitted Uses:**

Cannabis – Retailer<sup>7</sup>

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

## EXHIBIT 3

### Amendment – North 101 Corridor Specific Plan

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

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

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

**1. Permitted Uses:**

Cannabis – Retailer<sup>9</sup>

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

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

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

**1. Permitted Uses:**

Cannabis – Retailer<sup>9</sup>

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

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

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

**1. Permitted Uses:**

Cannabis – Retailer<sup>10</sup>

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

## **EXHIBIT 4**

### **Amendment – Encinitas Ranch Specific Plan**

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

**Section 6.05 is amended to read as follows:**

#### **6.05 OVERVIEW**

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

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

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

...

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

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

#### **6.2 AGRICULTURAL ZONE (“AG” ZONE)**

##### **6.2.2 USES PERMITTED**

*A. Permitted Uses.*

Cannabis - Commercial Cultivation<sup>5</sup>

Cannabis - Product Manufacturing<sup>5</sup>

Industrial Hemp<sup>5</sup>

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

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



**6.7 MIXED USE ZONE (“ER-MU1” ZONE)**

**6.7.1 USES PERMITTED**

*A. Permitted Uses.*

Cannabis – Retailer<sup>6</sup>

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

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

**6.8 MIXED-USE ZONE (“ER-MU2” ZONE)**

**6.8.1 USES PERMITTED**

USE	WEST SAXONY
Cannabis – Retailer <sup>8</sup>	P <sup>(8)</sup>

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

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

**6.9 COMMERCIAL ZONE (“ER-C” ZONE)**

**6.9.1 USES PERMITTED**

*A. Permitted Uses.*

Cannabis – Retailer<sup>2</sup>

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

**EXHIBIT 5**

**Amendment – Cardiff-by-the-Sea Specific Plan**

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

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

P = Permitted by Right                                      P 1 = Permitted on ground floor only      Cm 2 = Upper floor only

C = Major Conditional Use Permit                      P 2 = Upper floor only                                      A = Ancillary (see EMC 30.04)

Cm = Minor Conditional Use Permit                      C 2 = Upper floor only                                      X = Prohibited

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