

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, DELETING SECTIONS 15-2739 AND 15-2739.1 OF THE FRESNO MUNICIPAL CODE AND REPLACING WITH THE REVISED SECTION 15-2739 BELOW, RELATING TO ADULT USE AND MEDICINAL CANNABIS RETAIL BUSINESS AND COMMERCIAL CANNABIS BUSINESS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Existing Sections 15-2739 and 15-2739.1 of the Fresno Municipal Code are deleted:

~~**SECTION 15-2739. MEDICAL MARIJUANA DISPENSARIES.**~~

~~A. Medical Marijuana is defined as set forth in California Health and Safety Code section 11362.5 et seq.~~

~~B. A "Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made~~

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Date Adopted:

Date Approved

Effective Date:

Ordinance No.

City Attorney Approval: _____

~~available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code section 11362.5 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 et seq.~~

~~C. A "Medical Marijuana Cooperative" involves two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or giving away medical marijuana.~~

~~D. A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed only in a zone district designated for medical offices and only if consistent with state and federal law.~~

~~(Added Ord. 2015-39, § 1, eff. 1-9-16).~~

~~SEC. 15-2739.1. RECREATIONAL MARIJUANA ACTIVITIES.~~

~~A. Definitions.~~

~~1. "Marijuana" means all parts of the plant Cannabis sativa L., Cannabis indica, or Cannabis ruderalis, 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, as defined in California Health and Safety Code § 11018, as may be amended. Marijuana includes "marijuana products," which 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 topical product containing marijuana or concentrated cannabis or other ingredients, as defined in California Health and Safety Code § 11018.1, as may be amended.~~

~~Marijuana does not include "Medical marijuana" as used for medical purposes in accordance with California Health and Safety Code §§ 11362.7 et seq.~~

~~2. "Marijuana Dispensary" means any operation, including a store-front facility or structure, mobile facility, club, or delivery service to or from any location within the city, wherein marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to any person for recreational purposes.~~

~~A Marijuana Dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use complies strictly with~~

~~applicable law including, but not limited to, California Health and Safety Code § 11362.7 et seq.~~

~~3. A "Commercial Marijuana Operation" includes, other than expressly permitted under the Fresno Municipal Code or state law, any cultivation, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of marijuana.~~

~~4. "Consumption of marijuana" means receiving marijuana into the body by any means, including, but not limited to, smoking, eating, drinking, consuming, vaporizing, ingesting and topical application.~~

~~**B. Consumption of marijuana prohibited in public.** Consumption of marijuana is prohibited in any public place, in conformance with state law, including, but not limited to, any city owned building, city owned or leased property, city right-of-way, city parks, and city buses. Any consumption of marijuana shall be done in a manner so as to not cause a nuisance to nearby occupants with noxious odors or other adverse health and safety impacts.~~

~~**C. Marijuana Dispensary as a prohibited use.** A Marijuana Dispensary is a prohibited use in all zone districts in the city.~~

~~**D. Commercial Marijuana Operation as a prohibited use.** A Commercial Marijuana Operation is a prohibited use in all zone districts~~

~~in the city. However, this prohibition does not apply to a commercial entity that conducts laboratory testing of marijuana (either recreational or medicinal), if testing of marijuana comprises twenty percent or less of the entity's and its affiliates' business at the Fresno location, the entity is located in an Industrial District, the entity complies with all applicable state laws, and the entity creates a public health benefit with a focus on public safety.~~

~~E. **Severability.** If any section, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this article. The Council hereby declares that it would have passed this ordinance and adopted this article and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.~~

SECTION 2. Section 15-2739 of the Fresno Municipal Code is added to read:

SECTION 15-2739. Adult Use and Medicinal Cannabis Retail Business and Commercial Cannabis Business

A. Definitions

1. The definitions within Section 9-3304 of this Code, as may be amended, apply to adult use and medicinal cannabis retail businesses and commercial cannabis businesses.

B. Location and Design of Cannabis Retail Businesses

1. Comply with the requirements within Section 9-3307 of this Code , as may be amended, relating to location and design requirements for a retail cannabis business, including, but not limited to, the following:

a. All cannabis retail businesses must be located on property zoned DTN (Downtown Neighborhood), DTG (Downtown General), CMS (Commercial Main Street), CC (Commercial Community), CR (Commercial Regional), CG (Commercial General), CH (Commercial Highway), NMX (Neighborhood Mixed-Use), CMX (Corridor/Center Mixed Use), RMX (Regional Mixed-Use), and must meet all of the requirements for development in these zones, including, but not limited to, parking, lighting, building materials, etc.

b. All buildings in which a cannabis retail business is located shall be no closer than eight hundred (800) feet from any property

boundary containing any of the following:

1. A cannabis retail business.
 2. A school providing instruction for any grades pre-school through 12 (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).
 3. A day care center licensed by the state Department of Social Services that is in existence at the time a complete commercial cannabis business permit application is submitted.
 4. A youth center that is in existence at the time a complete commercial cannabis business permit application is submitted.
- c. Each applicant shall provide a neighborhood responsibility plan so the review authority may find that the proposed use and its operating characteristics are not detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and will not result in the creation of a nuisance.
- d. In addition to the requirements within Section 9-3307 of this Code, as may be amended, each proposed cannabis retail business shall meet the following building design guidelines:

1. Demonstrate compatibility with the surrounding character of the neighborhood and blend in with existing buildings. The establishment should look like any other similarly situated building. New and existing buildings shall meet the minimum Façade Design Development Standards of the associated zone district unless compliance would cause the building to not be compatible with the surrounding character of the neighborhood and existing buildings.

C. Location and Design of Commercial Cannabis Businesses

1. Comply with the requirements within Section 9-3308 of this Code, as may be amended, relating to location and design requirements for a commercial cannabis business, including, but not limited to, the following:

a. Laboratory testing may take place in a Commercial, Employment, or Downtown District and must meet all of the requirements for development in these zones, including, but not limited to, parking, lighting, building materials, etc.

b. Cultivators, distributors, or manufacturers must be located within the Cannabis Innovation Zone, inside a Cannabis Innovation Hub, or within one-half (1/2) mile of State Route 99 between Shaw Ave. and

Clinton Ave., one (1) mile of State Route 99 north of Shaw Ave. or south of Clinton Ave., or within one (1) mile of State Route 180 west of State Route 99, must be zoned either IL (Light Industrial) or IH (Heavy Industrial), and must meet all of the requirements for development in these zones. Any building in which a cultivator, distributor, or manufacturer is located shall be no closer than one thousand (1,000) feet from any property boundary containing any of the following:

1. Any residentially zoned parcel in the city, including any legal non-conforming residential uses as of the date a complete commercial cannabis business permit application is submitted.
2. A school providing instruction for any grades pre-school through 12 (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).
3. A day care center licensed by the state Department of Social Services that is in existence at the time a complete commercial cannabis business permit application is submitted.
4. A youth center that is in existence at the time a complete commercial cannabis business permit application

is submitted.

c. All Cannabis Innovation Hubs must be located within one-half (1/2) mile of State Route 99 between Shaw Ave. and Clinton Ave., one (1) mile of State Route 99 north of Shaw Ave. or south of Clinton Ave., or within one (1) mile of State Route 180 west of State Route 99, and must be zoned either IL (Light Industrial) or IH (Heavy Industrial), and must meet all of the requirements for development in these zones. All Cannabis Innovation Hub building shall be located no closer than one thousand (1,000) feet from any property boundary containing any of the following:

1. Any residentially zoned parcel in the city, including any legal non-conforming residential uses as of the date a complete commercial cannabis business permit application is submitted.
2. A school providing instruction for any grades pre-school through 12 (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).
3. A day care center licensed by the state Department of Social Services that is in existence at the time a complete commercial cannabis business permit application is submitted.

4. A youth center that is in existence at the time a complete commercial cannabis business permit application is submitted.

d. Each applicant shall provide a neighborhood responsibility plan so the review authority may find that the proposed use and its operating characteristics are not detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and will not result in the creation of a nuisance.

e. In addition to the requirements within Section 9-3308 of the Fresno Municipal Code, all buildings associated with a commercial cannabis business shall meet the following building design guidelines:

1. Demonstrate compatibility with the surrounding character of the neighborhood and blend in with existing buildings. The establishment should look like any other similarly situated building. New and existing buildings shall meet the minimum Façade Design Development Standards of the associated zone district unless compliance would cause the building to not be compatible with the surrounding character of the neighborhood and existing buildings. For existing buildings, pictures and elevations of

the building(s) must be provided to the City upon submittal of a Conditional Use Permit application.

D. Operating Requirements for All Commercial Cannabis Activity

1. Comply with the requirements within Section 9-3309 of this Code, as may be amended, relating to operating requirements for all commercial cannabis activity.

E. Operating Requirements for a Cannabis Retail Business

1. Comply with the requirements within Section 9-3310 of this Code, as may be amended, relating to operating requirements for a cannabis retail business.

F. Operating Requirements for a Distributor

1. Comply with the requirements within Section 9-3311 of this Code, as may be amended, relating to operating requirements for a cannabis distributor.

G. Operating Requirements for a Cultivator

1. Comply with the requirements within Section 9-3312 of this Code, as may be amended, relating to operating requirements for a cannabis cultivator.

H. Operating Requirements for a Testing Laboratory

1. Comply with the requirements within Section 9-3313 of this Code, as may be amended, relating to operating requirements for a cannabis testing laboratory.

I. Operating Requirements for a Manufacturer

1. Comply with the requirements within Section 9-3314 of this Code, as may be amended, relating to operating requirements for a cannabis manufacturer.

J. Signage

1. Signage shall conform to the requirements of Chapter 15, Article 26 of this Code, Section 9-3309(h) of this Code, and this subsection. Where conflict may occur, the more restrictive provisions shall govern.

2. No signs placed on the premises of a cannabis retail business or a commercial cannabis business shall obstruct any entrance or exit to the building

3. No signs of a cannabis retail business or a commercial cannabis business shall be placed on any window.

4. Business identification signage shall be limited to that needed for identification only and shall not contain any logos or

information that identifies, advertises, or lists the services or the products offered. No cannabis retail business or commercial cannabis business may advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises or elsewhere including, but not limited to, the public right-of-way.

5. Signage shall not be directly illuminated, internally or externally. No banners, flags, billboards may be used at any time.

6. No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a Cannabis Conditional Use Permit, or on any of the vehicles owned or used as part of the commercial cannabis business or cannabis retail business.

K. Landscaping

1. **New Buildings.** Landscaping shall be provided per the underlying District.

2. **Existing Buildings.** Perimeter landscaping and Parking Lot Shading shall be provided per the underlying district. The Review Authority, at their discretion, may make exceptions to the prescribed standards, however in no case shall the reduction result in a net reduction of 35 percent or greater in the amount of landscaping provided.

Landscaping may also be aggregated to minimize the impact on existing parking areas.

L. Lighting

1. Lighting. The exterior of the premise, including adjacent public sidewalks and all parking lots under the control of the establishment, shall be illuminated during all hours of darkness in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, required illumination shall be placed and/or shielded in a way that minimizes interference with the neighboring residences. Provide the hours of operation of the lighting within the required neighborhood responsibility plan.

M. Litter and Graffiti

1. Litter must be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the cannabis retail business or commercial cannabis business; these areas must be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

2. The owner or operator shall remove graffiti within 48 hours.

N. Cannabis Conditional Use Permit

1. Prior to commencing operations, a commercial cannabis business or cannabis retail business must obtain a Cannabis Conditional Use Permit from the Planning and Development Department. Prior to applying for a Cannabis Conditional Use Permit, an applicant must first obtain a Commercial Cannabis Business Permit from the city.

2. Cannabis Conditional Use Permit applications shall be reviewed by the respective Council District Project Review Committee.

3. Cannabis Conditional Use Permit applications shall be routed for review to the respective school district in which the property is located.

4. Land use approvals shall include compliance with all applicable provisions of CEQA.

5. The process described in Chapter 15, Article 50 of this Code shall apply to a Cannabis Conditional Use Permit. Where conflict may occur with Chapter 15, Article 50, this section shall govern.

O. Review Authority

1. The Director shall approve, conditionally approve, or deny applications for Cannabis Conditional Use Permits based on consideration of the requirements of this article. The Director may, at their discretion, refer any application that may have significant public interest to the

Planning Commission for a decision. In the event of a referral, the Planning Commission shall hold a public hearing prior to making the decision.

P. Application Requirements

1. Applications for a Cannabis Conditional Use Permit shall be submitted in accordance with the provisions set forth in Section 15-5002, Application and Fees.

2. The Cannabis Conditional Use Permit application shall be accompanied by a written narrative, operational statement, site plans, floor plans, elevations, and other evidence in support of the applicable findings required by subsection R, Required Findings.

3. The Director may require the applicant to submit additional information, of such type and in such form as the Director may specify, as the Director may deem relevant to the application, including, but not limited to, statements, numeric data, and technical studies, as appropriate.

Q. Public Notice

Public Notice shall be provided 10 days prior to the date of action pursuant to Section 15-5007.

R. Required Findings

A Cannabis Conditional Use Permit shall only be granted if the decision-maker determines that all of the required findings of Section 15-5306 of this Code can be made for the project as submitted or as modified. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.

S. Conditions of Approval

In approving a Cannabis Conditional Use Permit, the decision-maker may impose reasonable conditions or restrictions deemed necessary in accordance with Section 15-5307 of this Code

T. Appeals

Cannabis Conditional Use Permit decisions are subject to the appeal provisions of Section 15-5017, Appeals.

U. Expiration of Cannabis Conditional Use Permit.

1. A Cannabis Conditional Use Permit granted under this Code shall automatically expire five years after the date of issuance.

2. A Cannabis Conditional Use Permit granted under this Code runs with the land for up to five years. Should an operator discontinue operations at an existing Retail Cannabis Business or Commercial Cannabis Business, a new operator may take over the existing Cannabis

Conditional Use Permit for the unexpired time period. Prior to commencing operations, the new operator must obtain a commercial cannabis business permit, submit an approved operational statement, and submit an approved neighborhood responsibility plan.

V. Indemnification

1. All applicants for a Cannabis Conditional Use Permit and related environmental approval pursuant to the California Environmental Quality Act (CEQA) shall be responsible to fully indemnify, defend, and hold harmless the City, its officers, employees, agents, and volunteers, for any and all claims and legal challenges related to the City's actions in approving their applications. Applicant's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct of City or any of its officers, officials, employees, agents or volunteers. Indemnification and defense shall be considered a condition of approval for all Cannabis Conditional Use Permit approvals.

2. The responsibility to indemnify and defend the City as required under this Section shall be stated in all application documents

provided by the City; however the failure to do so shall not negate the requirement to indemnify and defend.

3. If an applicant fails to accept responsibility to indemnify and defend as required in this Section, then the Cannabis Conditional Use Permit approval shall become null and void upon notice from the City Manager, as approved by the City Attorney, and the applicant shall be liable to the City for all costs, settlements, and/or judgments incurred by the City with respect to the challenge to the Cannabis Conditional Use Permit approval. If an applicant fails to indemnify and defend the City, the City may, at the discretion of the City Attorney, concede the challenge to the Cannabis Conditional Use Permit approval.

STATE OF CALIFORNIA)

COUNTY OF FRESNO) ss.

CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2020.

AYES :

NOES :

ABSENT :

ABSTAIN :

Mayor Approval: _____, 2020

Mayor Approval/No Return: _____, 2020

Mayor Veto: _____, 2020

Council Override Vote: _____, 2020

YVONNE SPENCE, CMC

City Clerk

BY: _____

Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN,

City Attorney

BY: _____

Mary Raterman-Doidge Date

Senior Deputy City Attorney

Date Adopted:

Date Approved

Effective Date:

Ordinance No.

City Attorney Approval: _____