

ORDINANCE NO. 2946

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING A ZONING TEXT AMENDMENT TO CHAPTER 9.52 OF TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE PERTAINING TO RETAIL SALE BY DELIVERY OF MEDICINAL CANNABIS

City Attorney Summary

This Ordinance amends Chapter 9.52 (Cannabis Activities) of Title 9 (Land Use) of the Garden Grove Municipal Code to permit the retail sale by delivery of medicinal cannabis in the City subject to specified regulations in compliance with State law.

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

WHEREAS, the City of Garden Grove currently prohibits the delivery of medicinal cannabis within the City limits; and

WHEREAS, SB 1186 (Chapter 395, Statutes of 2022), known as the Medicinal Cannabis Patients' Right of Access Act ("Act"), prohibits local jurisdictions, beginning January 1, 2024, from adopting or enforcing any regulation that prohibits, or has the effect of prohibiting, the retail sale by delivery within the jurisdiction of medicinal cannabis to medicinal cannabis patients or their primary caregivers by licensed medicinal cannabis businesses in a timely and readily accessible manner, and in types and quantities that are sufficient to meet demand from medicinal cannabis patients within the local jurisdiction ; and

WHEREAS, the Act permits local jurisdictions to adopt and enforce reasonable regulations on retail sale by delivery of medicinal cannabis; and

WHEREAS, the Act does not limit or otherwise affect the ability of a local jurisdiction to adopt and enforce any regulations on commercial cannabis operations other than retail sale by delivery of medicinal cannabis in the local jurisdiction; and

WHEREAS, Amendment No. A-038-2023(A) was initiated by the City of Garden Grove and includes a zoning text amendment to Chapter 9.52 of the Garden Grove Municipal Code to establish an exception in accordance with the Act to permit and regulate the retail sale by delivery of medicinal cannabis within the City; and

WHEREAS, the City Council finds that there are presently more than thirty (30) licensed medicinal cannabis retailers located within a 15 mile radius of the City of Garden Grove from which retail sale by delivery of medicinal cannabis in the City is or may be available; therefore, prohibiting the establishment of physical premises within the City from which retail sale by delivery of medicinal cannabis is conducted will not have the effect of prohibiting the retail sale by delivery of medicinal cannabis to medicinal cannabis patients or their primary caregivers in a timely and readily accessible manner in types and quantities that are sufficient to meet demand from medicinal cannabis patients who reside in the City; and

WHEREAS, the City Council finds that the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"), Cal. Pub. Resources Code Section 21000 et seq. pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15064(b)(3)) because it can be seen with certainty that there is no possibility that the proposed Ordinance may have a significant effect on the environment.

WHEREAS, following a public hearing held on October 19, 2023, the Garden Grove Planning Commission adopted Resolution No. 6071-23 recommending that the City Council approve Zoning Text Amendment No. A-038-2023(A) and adopt the proposed Ordinance; and

WHEREAS, a duly noticed public hearing regarding Amendment No. A-038-2023(A) was held by the City Council on November 14, 2023 and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council of the City of Garden Grove gave due and careful consideration to the matter during its meeting of November 14, 2023, and considered all oral and written testimony presented; and

WHEREAS, the City Council hereby makes the following findings regarding Zoning Text Amendment No. A-038-2023(A):

- A. Amendment No. A-038-2023(A) is internally consistent with the goals, objectives and elements of the City's General Plan as described in the Findings and Reasons of Planning Commission Resolution No. 6071-23.
- B. Amendment No. A-038-2023(A) will promote the public interest, health, safety, and welfare as described in the Findings and Reasons of Planning Commission Resolution No. 6071-23.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council finds that the above recitals are true and correct.

SECTION 2: Amendment No. A-038-2023(A) is hereby approved pursuant to the findings set forth herein and the facts and reasons stated in Planning Commission Resolution No. 6071-23 a copy of which is on file in the Office of the City Clerk, and which is incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 3: Subsection (C) of Section 9.52.020 (Cannabis Dispensaries and Delivery Prohibited) of Chapter 9.52 (Cannabis Activities) of Title 9 (Land Use) of the Garden Grove Municipal Code is hereby amended to read as follows (additions in **bold/underline** text):

C. Exemptions.

(1) Pursuant and subject to Proposition 64 adopted by the State voters in November 2016, this section shall not prohibit: (1) the possession, planting, cultivation, harvesting, drying, or processing of up to six marijuana plants by persons 21 years of age or older inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure; or (2) the possession of, or giving away of, the marijuana produced by such plants to persons 21 years of age or older.

(2) (a) Pursuant and subject to SB 1186 (Chapter 395, Statutes of 2022), known as the Medicinal Cannabis Patients' Right of Access Act, subject to the provisions of this subsection C(2), this section shall not prohibit the retail sale by delivery within the City of medicinal cannabis to medicinal cannabis patients or their primary caregivers by a medicinal cannabis business from a fixed location outside of the City. For purposes of this subsection (C)(2), the terms "medicinal cannabis," "medicinal cannabis business," and "medicinal cannabis patient" shall have the same meaning as defined in Section 26321 of the California Business and Professions Code.

(b) Medicinal cannabis businesses engaging in the retail sale by delivery of medicinal cannabis within the City shall be subject to the following requirements:

(i) Each medicinal cannabis business engaging in the retail sale by delivery of medicinal cannabis in the City shall obtain and maintain a City of Garden Grove business tax certificate pursuant to Title 5 (Business Operation Taxes, Permits and Regulations) of the Garden Grove Municipal Code.

(ii) Each medicinal cannabis business shall maintain an active M-license issued by the State of California and all applicable permits and/or licenses required by the local jurisdiction in which the business is located. The business shall submit a copy of any and all of its State and local licenses and permits required for its operation to the City's Tax Administrator prior to issuance or renewal of a business tax certificate. The business shall notify the City's Tax Administrator if any applicable State or local license or permit required for its operation expires or is denied, suspended, modified, revoked.

(iii) Each medicinal cannabis business and employee of a medicinal cannabis business engaged in the retail sale by delivery of medicinal cannabis in the City shall at all times comply with all

applicable regulations promulgated by the California Department of Cannabis Control, including, but not limited to, the regulations pertaining to the delivery of cannabis set forth in Cal. Code of Regs., tit. 4, sections 15415 through 15421.

(iv) In accordance with Subsection A above, the retail sale by delivery of adult-use cannabis is prohibited throughout the City. Only the retail sale by delivery of medicinal cannabis or medicinal cannabis products in the City as required by State law is permitted. A medicinal cannabis business or employee of a medicinal cannabis business shall not sell or offer for sale any cannabis accessories or branded merchandise of any kind concurrently or in conjunction with the retail sale of medicinal cannabis or medicinal cannabis products in the City.

(v) All deliveries of medicinal cannabis shall be performed by a delivery employee who is directly employed by the medicinal cannabis business. Each medicinal cannabis business shall maintain an accurate list of its delivery employees and shall provide the list to the City upon request. Each delivery employee engaging in the retail sale by delivery of medicinal cannabis in the City shall carry during deliveries and immediately provide upon request by the City or any law enforcement officer the following: a copy of the current business tax certificate issued to the medicinal cannabis business; a copy of the current license or licenses issued to the medical cannabis business by the State Department of Cannabis Control which authorize it to engage in the retail sale of medicinal cannabis; a copy of the QR Code certificate issued by the State Department of Cannabis Control; the employee's government-issued identification; an identification badge provided by the employer; delivery inventory ledgers from the time the employee left the employer's premises; all delivery receipts for cannabis goods carried by the delivery employee, in the delivery vehicle, or any deliveries that have already been made to customers; and a log of all stops from the time the employee left the employer's premises. A delivery employee shall not carry cannabis goods valued in excess of five thousand dollars (\$5,000) at any time while engaged in the retail sale by delivery of medicinal cannabis in the City.

(vi) All deliveries of medicinal cannabis must be made to a physical address that is not located on publicly owned land, on land or in a building leased by a public agency, a school providing instruction in kindergarten or any grades one through twelve, a day care center, or a youth center. A licensed retailer shall only sell medicinal cannabis goods to individuals who are at least 18 years of age and possesses a valid physician's recommendation

after confirming the customer's age, identity, and physician's recommendation.

(vii) Each medicinal cannabis business shall maintain an accurate list of all vehicles used by its employees to deliver medicinal cannabis in the City, including each vehicles' make, model, year, color, license plate number, vehicle identification number (VIN), and Department of Motor Vehicles registration information, along with proof of current automobile liability insurance for each such vehicle as required by State law, and shall provide such list and proof of automobile insurance to the City upon request, in the event of any changes, and prior to issuance or renewal of a business tax certificate. Retail sale by delivery of medicinal cannabis in the City may only be conducted using a properly insured vehicle that is identified on the most current list provided to the City and that is outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery, as provided by State law. In accordance with State law, a delivery vehicle shall not have any marking or other indications on the exterior of the vehicle that may indicate that the delivery employee is carrying cannabis goods for delivery.

(c) This Subsection C(2) only authorizes the retail sale by delivery of medicinal cannabis by a licensed medical cannabis business from a fixed premises located outside of the City. Nothing in this section shall be construed to permit the establishment of a cannabis dispensary or other physical premises from which retail sale by delivery of medicinal cannabis within the City is conducted.

(d) Nothing in this subsection C(2) is intended to or shall be interpreted to prohibit medicinal cannabis patients or their caregivers from purchasing by delivery sufficient medicinal cannabis to meet their demands in a timely and readily accessible manner.

SECTION 4: If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 5: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption or on January 1, 2024, whichever is later.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 28th day of November 2023.

/s/ STEVE JONES
MAYOR

ATTEST:

/s/ TERESA POMEROY, CMC
CITY CLERK

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

I, TERESA POMEROY, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on November 14, 2023, with a vote as follows:

AYES: COUNCIL MEMBERS: (7) O'NEILL, TRAN, DOVINH, KLOPFENSTEIN,
NGUYEN-PENALOZA, BRIETIGAM, JONES
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

and was passed on November 28, 2023, by the following vote:

AYES: COUNCIL MEMBERS: (7) O'NEILL, TRAN, DOVINH, KLOPFENSTEIN,
NGUYEN-PENALOZA, BRIETIGAM, JONES
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ TERESA POMEROY, CMC
CITY CLERK