

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD
CITY AMENDING ARTICLE 59 OF THE REDWOOD CITY ZONING
ORDINANCE REGARDING COMMERCIAL CANNABIS ACTIVITIES**

WHEREAS, in 1970, Congress enacted the federal Controlled Substances Act which, among other things, makes it illegal to import, manufacture, distribute, possess or use cannabis in the United States; and

WHEREAS, in 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state's prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of cannabis; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq., "The Compassionate Use Act of 1996" (CUA); and

WHEREAS, the CUA created a limited exception from criminal liability for seriously ill persons who are in need of medical cannabis for specified medical purposes and who obtain and use medical cannabis under limited, specified circumstances; and

WHEREAS, in 2004, the California enacted the "Medical Marijuana Program" (MMP), codified as Health and Safety Code sections 11362.7 to 11362.83, to clarify the scope of the CUA, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical cannabis, including the collective or cooperative cultivation of medical cannabis; and

WHEREAS, the California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the CUA and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives; and

WHEREAS, in 2015, California enacted three bills, Assembly Bills 243 and 266 and Senate Bill 643, commonly referred to as the Medical Cannabis Regulation and Safety Act (MCRSA), which established a comprehensive state regulatory and licensing framework for cultivation, manufacturing, sale, transportation, storage, delivery, and testing of medical cannabis in California; and

WHEREAS, in 2016, the voters of the State of California approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" (AUMA), which legalized recreational cannabis use by persons age twenty-one and over, authorized cultivation of up to six cannabis plants for personal consumption, and established a new state regulatory and licensing framework for cultivation, manufacturing, sale, transportation, storage, delivery, and testing of recreational cannabis in California; and

WHEREAS, in 2017, California enacted Senate Bill 94, which repealed MCRSA, incorporated certain provisions of the MCRSA into the licensing provisions of the AUMA, and consolidated the state regulatory and licensing framework for medical and recreational cannabis, with the consolidated provisions to be known as “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (MAUCRSA); and

WHEREAS, under Senate Bill 94, a local jurisdiction may reasonably regulate, but cannot ban, personal indoor cultivation of up to six cannabis plants per single private residence, and can ban or regulate personal outdoor cultivation; and

WHEREAS, Senate Bill 94 preserves the right of property owners, including landlords, to prohibit cannabis cultivation on their property; and

WHEREAS, Senate Bill 94 preserves the authority of local jurisdictions to prohibit or impose additional restrictions on the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of commercial medical or recreational cannabis; and

WHEREAS, the City of Redwood City has prohibited medical cannabis distribution facilities in all zoning districts since October 24, 2011, when the City Council adopted Ordinance No. 1130-354 adding Article 59 to the Zoning Ordinance; and

WHEREAS, neither cannabis cultivation nor commercial cannabis activities are listed as permitted or conditionally permitted land uses in the City’s Zoning Code, therefore they are prohibited in Redwood City under principles of permissive zoning (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433); and

WHEREAS, the City Council has determined that express Zoning Code regulations regarding cannabis cultivation and commercial cannabis activities will benefit the public by providing clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City’s policies; and

WHEREAS, the City Council finds that impacts of medical and recreational cannabis are the same and therefore no separate use classifications or regulations are necessary; and

WHEREAS, on October 3, 2017, the Planning Commission held a public hearing to consider a draft ordinance with proposed amendments to Zoning Ordinance Article 59 and recommended amending Zoning Ordinance Article 59 to allow personal indoor cultivation of up to six plants, to prohibit all other cultivation, and to prohibit all commercial cannabis activity except for deliveries; and

WHEREAS, in order to protect the public health, safety, and welfare, the City Council desires to amend Zoning Ordinance Article 59 to allow personal indoor cultivation of up to six plants, to prohibit all other cultivation, and to prohibit all commercial cannabis activity except for deliveries; and

WHEREAS, the City Council of the City of Redwood City is the decision-making body for this Ordinance; and

WHEREAS, the City Council has reviewed and considered the exemption determination under the California Environmental Quality Act (CEQA) prior to taking any approval actions on this Ordinance and approves such exemption.

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

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council hereby finds that the proposed Ordinance is in the public interest.

Section 3. The proposed Ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

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

Section 5. Article 59 of the Zoning Ordinance is hereby amended by repealing it in its entirety and replacing it with the language provided in Exhibit A, attached hereto and incorporated herein by this reference.

Section 6. This Ordinance shall go into effect 30 days following its adoption.

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EXHIBIT A

Article 59

Cannabis Cultivation and Commercial Cannabis Activity

Sections

- 59.1 Purpose.**
- 59.2 Applicability.**
- 59.3 Definitions.**
- 59.4 Commercial Cannabis Activity Prohibited.**
- 59.5 Cultivation of Cannabis Prohibited.**
- 59.6 Violation – Penalty.**
- 59.7 Public Nuisance.**

59.1 Purpose.

This Article establishes regulations governing cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, or sale of cannabis and cannabis products, whether for medicinal or adult use. The City finds it necessary to establish such regulations in the interest of the public health, safety and welfare to regulate all cannabis-related activities.

59.2 Applicability.

This Article shall apply to the establishment of all land uses related to cannabis and cannabis products, whether for medicinal or adult use.

59.3 Definitions.

For the purposes of this Article, the following words and phrases shall have the following meanings:

- A.** “Cannabis” 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. “Cannabis” shall not include industrial hemp, as defined in Health and Safety section 11018.5.
- B.** “Cannabis Product” means cannabis 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 cannabis or concentrated cannabis and other ingredients.

- C. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, or sale of cannabis and cannabis products for commercial purposes, whether for profit or nonprofit, and for which a state license is required under Business and Professions Code sections 26000 and following. Commercial cannabis activity shall not include delivery of cannabis and cannabis products.
- D. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- E. “Delivery” shall have the same meaning set forth in Business and Professions Code section 26001, and includes the commercial delivery, transfer or transport, or the arranging for the commercial delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of cannabis, cannabis edibles, and/or any cannabis products to or from any location within the jurisdictional limits of the Redwood City, and any and all associated business and/or operational activities.
- F. “Fully enclosed and secure structure” means a code-compliant space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, and which is accessible only through one or more locking doors.
- G. “Indoor” means within a fully enclosed and secure structure as defined herein.
- H. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

59.4 Commercial Cannabis Activity Prohibited.

Commercial cannabis activity is a prohibited use in all zoning districts.

59.5 Cultivation of Cannabis Prohibited.

- A. Cannabis cultivation is a prohibited use in all zoning districts except as provided in subsection B.
- B. Notwithstanding the general prohibition in subsection A, indoor cultivation of no more than six living cannabis plants for personal use is permitted in all zoning districts. No more than six living cannabis plants may be possessed, planted, cultivated, harvested, dried, or processed within a private residence at any one time, including within an accessory structure to a private residence that is fully enclosed and secure. The plants shall not be visible from a public place. Persons engaging in indoor cultivation must comply with state and local laws, including all applicable building, electrical fire, and water codes and regulations.

59.6 Violation—Penalty.

- A.** Any person found to be in violation of any provision of this Article shall be subject to the enforcement remedies set forth in Article 50 of this Code.
- B.** Each violation of this Article and each day of violation of this Article shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (A) of this section for each and every separate violation and each and every day of violation.

59.7 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this Article shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Article 50 of this Code.