



# PLANNING COMMISSION STAFF REPORT

**APPLICATION:** Ordinance No. 2017-05

**AGENDA ITEM:** PH-1

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**MEETING DATE:** September 12, 2017

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**SUBJECT:** Ordinance No. 2017-05  
Planning Commission Resolution No. 2017-02

**REQUEST:** Amendment to the Monrovia Municipal Code amending Title 5 (Business Taxes, Licenses and Regulations) to prohibit the issuance of a business license for commercial cannabis activity and uses except for laboratory testing and manufacturing facilities, and amending Title 17 (Zoning) to prohibit commercial cannabis uses except for laboratory testing and manufacturing facilities, outdoor cannabis cultivation, and to regulate indoor cannabis cultivation on private residences consistent with State law.

**APPLICANT:** City of Monrovia

**ENVIRONMENTAL DETERMINATION:** Categorical Exemption (Class 5);  
State CEQA Guidelines Section 15061(b)(3)

**BACKGROUND:** Except when preempted by state law, the City of Monrovia has generally followed federal law regarding regulations pertaining to marijuana use and cultivation. Over the past few decades, California's laws have evolved through voter initiative, legislative action and case law. All of which have affected various aspects of a local jurisdiction's ability to regulate cannabis. These changes to the law provide the framework for the proposed ordinance that is presented for the Planning Commission's review. Staff has compiled the following summary of these regulatory changes.

### ***The Compassionate Use Act and Related Statutes***

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate cannabis for medical use under State law. In 2003, the California Legislature adopted SB 420, entitled the Medical Marijuana Program ("MMP"), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate cannabis for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP required or imposed an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical cannabis within its jurisdiction. Numerous court decisions have held that the CUA and MMP provide criminal law immunities for qualified patients, persons with identification cards, and primary caregivers for possessing, storing and cultivating cannabis, but do not preempt local land use ordinances from prohibiting medical cannabis businesses, deliveries, storage, and cultivation. See *Maral v. City of Live Oak*, 221 Cal.App.4th 975,

984 (2013); *Kirby v. County of Fresno*, 242 Cal.App.4th 940, 969-70 (2015); *Safe Life Caregivers v. City of Los Angeles*, 243 Cal.App.4th 1029, 1032 (2016).

In 2015, Governor Brown signed into law the Medical Cannabis Regulation and Safety Act (“MCRSA”). The MCRSA established State licensing requirements for medical cannabis businesses and safety and testing standards for medical cannabis and medical cannabis products. The MCRSA established a dual licensing scheme whereby a medical cannabis business was required to obtain both a local license and a State license to legally operate in the State. The MCRSA allowed a city to maintain local control over whether medical cannabis businesses could operate in its jurisdiction.

### ***The Control, Regulate and Tax Adult Use of Marijuana Act of 2016***

The Control, Regulate and Tax Adult Use of Marijuana Act (“the AUMA”) was approved by a majority of California voters on November 8, 2016. As a result, it is now legal for persons 21 years of age or older to: (1) smoke or ingest cannabis or cannabis products; (2) possess, process, transport, purchase, obtain, or give away, to persons 21 years of age or older, 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and (3) possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in, or upon the grounds of, a private residence.

The AUMA established a comprehensive system of State licensing to regulate commercial cannabis activity, which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products. The AUMA retained local control by requiring that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

Under the AUMA, the growth and sale of cannabis is taxed by the State, and any local jurisdiction that decides to permit commercial cannabis activities may also levy their own local taxes on commercial cannabis activities, subject to voter approval. A portion of the proceeds of the taxes adopted by the AUMA will be allocated to grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with implementation of the AUMA. Local governments are prohibited from receiving these grants if they ban (1) commercial cannabis cultivation, (2) the outdoor cultivation of cannabis, including on private residences, or (3) the retail sale of cannabis or cannabis products. Since the City currently prohibits cannabis dispensaries (i.e., retail sales), and cannabis cultivation, it would not be eligible for any of these grants.

The AUMA allows for the planting, cultivating, harvesting, drying and processing (“cultivation activities”) of up to six cannabis plants in, or upon the grounds of, a private residence, as well as the possession of any cannabis produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, but a city is not required to adopt any regulations pertaining to cannabis cultivation. The AUMA also authorizes a city to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of cannabis is lawful in the State under Federal law.

### ***The Medicinal and Adult-Use Cannabis Regulation and Safety Act***

On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act

("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018. The City is now required to provide the newly created Bureau of Cannabis Control with a copy of any ordinance related to commercial cannabis activity and the contact information for the person designated by the City to serve as the contact person regarding commercial cannabis activity within the jurisdiction.

### ***Problems Associated with Cannabis Activities***

Cities in California and across the nation have reported negative effects of cannabis related activities. As cannabis plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary or robbery, and creating the potential for violent acts related to such criminal activity. By prohibiting commercial cannabis activity within City limits, the City is protecting the public health, safety and welfare. In Denver, burglary or attempted burglary accounted for 64% of cannabis-industry-related crime while theft accounted for another 11% of cannabis-industry-related crime in 2014. Overall, cannabis businesses make up less than 1% of all businesses in Denver, but account for approximately 11% of all reported business burglaries from 2012-2015.

A 2016 study, "A Micro-Temporal Geospatial Analysis of Medical Cannabis Dispensaries and Crime in Long Beach California" found that an increase of one dispensary per square mile related to a 0.4% to 2.6% increase in property crime. Additionally, greater densities of medical cannabis dispensaries were related to higher rates of violent crimes in areas adjacent to the dispensary locations. The 2016 study found that a citywide decline in dispensaries from the March 2012 peak of 37 dispensaries to the August/September 2013 low of five dispensaries was associated with a decline of 182.5 violent crimes per year and 219.3 property crimes per year. Comparatively, an equivalent drop of alcohol outlets was associated with a decline of only 26.2 violent crimes and 113.9 property crimes per year. These results suggest that local agencies that enact and enforce bans on dispensaries will reduce crime in neighborhoods next to where the dispensaries are located.

Unregulated cultivation enterprises often utilize substandard electrical wiring to avoid detection by illegally and dangerously diverting electricity. Some cities that allow cannabis cultivation operations have reported that the electrical use at these locations often surpasses what the electrical grid can withstand. In addition, indoor cannabis cultivation requires extensive amounts of water, aggravating California's drought conditions. According to the California Department of Fish and Wildlife, cannabis plants use six to eight gallons of water per plant, per day. Indoor cannabis cultivation can also produce dangerous levels of mold because of the combination of warm temperatures and high humidity found in many indoor cultivation operations.

**DISCUSSION/ANALYSIS:** The City currently prohibits the issuance of a business license for medical marijuana stores, dispensaries or co-ops and mobile marijuana dispensaries. The City also prohibits all medical marijuana stores, dispensaries, or coops that are broadly defined to mean “any location, structure, facility, vehicle, store, coop, residence or similar facility used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, or cultivated, including any of the foregoing is used in the delivery of marijuana.” The City’s current cannabis regulations prohibit conduct that is allowed under the AUMA (i.e. all cannabis cultivation), and do not expressly address all forms of commercial cannabis activity.

The proposed Ordinance would amend Chapters 5.96 and 17.44 of the Monrovia Municipal Code to expressly prohibit commercial cannabis activity and uses, whether for medical or non-medical purposes, except for laboratory testing and manufacturing facilities. The proposed Ordinance would also explicitly prohibit outdoor cultivation of cannabis throughout the City, and allow limited indoor cultivation of cannabis at private residences subject to compliance with specified regulations, in accordance with the AUMA.

### ***Commercial Activity***

The City currently prohibits medical marijuana dispensaries. The proposed Ordinance would amend Chapter 5.04 pertaining to business licenses to delete the definitions and references to “Delivery,” “Marijuana,” “Medical marijuana product,” “Medical marijuana store, dispensary, or coop,” and “Mobile medical marijuana dispensary” since those terms only apply in the context of medical cannabis, and the City is expanding its regulations to address both medical and non-medical cannabis. The proposed Ordinance would add the definition of “commercial cannabis activity” which is broadly defined to include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and/or cannabis products, for medical, non-medical, or any other purposes. “Commercial cannabis activity” does not include:

- (1) Laboratory testing or manufacturing facilities that are licensed by the State, that are not open to the general public, and that do not engage in any other “commercial cannabis activity” as defined herein, except for the possession, storing, packaging, transportation, and labeling of cannabis or cannabis products; or
- (2) Cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient (as that term is defined in California Health and Safety Code section 11362.7) for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person; or
- (3) Cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver (as that term is defined in California Health and Safety Code section 11362.7), but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

The proposed Ordinance would also amend Chapter 17.44 to prohibit all outdoor cannabis cultivation and all commercial cannabis uses, except for laboratory testing and manufacturing facilities. The proposed Ordinance would expressly prohibit all cannabis (both medical and non-medical) deliveries into and out of the City. The proposed Ordinance would not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery

to a person located outside the city, where such transport does not involve delivery within the jurisdictional limits of the city, since the City is not authorized to prohibit these activities under State law.

Cannabis laboratory testing and manufacturing facilities will be allowed to operate in the Manufacturing, O/RD/LM, and Business Enterprise zones, and will be subject to the same standards as all other manufacturing type uses located in these zones. For instance, if a cannabis business will be engaged in light manufacturing in the Manufacturing, O/RD/LM, and Business Enterprise zones, this use would be permitted as a matter of these zones. If a cannabis business will be engaged in heavy manufacturing, this use would be conditionally permitted in the Manufacturing zone, but would not be permitted in the O/RD/LM and Business Enterprise zones. There would not be any additional standards imposed on laboratory testing or manufacturing facilities other than a requirement that they not engage in the retail sale of cannabis.

### ***Cultivation***

The City currently prohibits the cultivation of cannabis for commercial and non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card, in all zones and all specific plan areas in the city. This provision is now inconsistent with State law. The proposed Ordinance would explicitly prohibit outdoor cultivation of all cannabis. It would also prohibit all commercial cannabis cultivation.

The proposed Ordinance allows the indoor cultivation of cannabis in a private residence, or inside a fully enclosed and secured structure located at the residential site. As proposed, a “fully enclosed and secure structure” is defined to mean a 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, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.”

In addition, indoor cultivation may be carried out only by a person who is at least 21 years old, and indoor cannabis cultivation is limited to six plants total, whether immature or mature, regardless of how many persons who are at least 21 years old reside at that private residence. The proposed Ordinance also contains standards on indoor cultivation to preserve and protect the environment and prevent adverse impacts on neighboring properties such as ensuring that the cultivation activities are not visible from adjoining properties, and that the cultivation does not become a public nuisance to neighbors.

One important health and safety consideration is prohibiting the use of compressed gases such as carbon dioxide and butane to be injected into the residence as a feature of personal cultivation activity. This is because injecting gases such as butane or carbon dioxide into an enclosed room to speed the growth of the cannabis plant significantly increases the risk of fire or explosion. There have been documented occurrences in other cities where unpermitted indoor cultivation facilities have exploded due to the use of compressed gases as a component of the cultivation process.

The proposed Ordinance also requires that all electrical equipment used in the cultivation of cannabis be plugged directly into a wall outlet or be hardwired. When electrical equipment is not plugged directly into the wall or hardwired, this increases the risk of fire. The proposed Ordinance also requires that a fully functional fire extinguisher be maintained at the private residence so that any potential fire can be more easily extinguished.

Additionally, on-site personal cultivation may include the use of the garage. The proposed Ordinance requires that the on-site cultivation activity cannot displace required on-site garage parking.

***Personal Use of Cannabis Exempt***

Consistent with State law, the amendments also contain exemptions that allow persons 21 years of age or older to: smoke or ingest cannabis or cannabis products; possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older 28.5 grams (one ounce) of cannabis, or eight grams of concentrated cannabis; and possess, plant, cultivate, harvest, dry or process up to six cannabis plants for personal use in a private residence, or inside an accessory structure located upon the grounds of a private residence, subject to compliance with indoor cultivation requirements set forth in Section 17.44.140 of the proposed Ordinance.

***General Plan Consistency***

Staff has determined the proposed Ordinance to be consistent with City's General Plan. Specifically, the proposed Ordinance furthers the following objectives of the Safety Element: Objective 3.2 "Adopt and enforce ordinances promoting fire prevention" and Objective 3.3 "Control hazardous or potentially dangerous operations or land uses."

***Planning Commission Action***

The proposed ordinance makes regulatory changes to the City's land use controls contained in the Monrovia Municipal Code. The Planning Commission serves at an advisory body to the City Council on matters related to land use and zoning. Staff has prepared a resolution to transmit the recommendation of the Planning Commission

**RECOMMENDATION:** Staff recommends approval of Ordinance No. 2017-05. If the Planning Commission concurs with this recommendation then, following the public hearing, the following motion is appropriate:

**MOTION:**

**Close the public hearing adopt Planning Commission Resolution No. 2017-02.**

## ORDINANCE NO. 2017-05

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA AMENDING TITLE 5 OF THE MONROVIA MUNICIPAL CODE TO PROHIBIT THE ISSUANCE OF A BUSINESS LICENSE FOR ALL COMMERCIAL CANNABIS ACTIVITY EXCEPT FOR LABORATORY TESTING AND MANUFACTURING FACILITIES, AND AMENDING TITLE 17 OF THE MONROVIA MUNICIPAL CODE TO PROHIBIT COMMERCIAL CANNABIS USES EXCEPT FOR LABORATORY TESTING AND MANUFACTURING FACILITIES, OUTDOOR CANNABIS CULTIVATION, AND TO REGULATE INDOOR CANNABIS CULTIVATION ON DWELLINGS CONSISTENT WITH STATE LAW**

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

### **SECTION 1. Findings and Purpose.**

A. The City of Monrovia, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State licensing scheme for commercial medical cannabis businesses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

C. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA added Division 10 (Marijuana) to the California Business & Professions Code, Sections 26000 *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. Although a State license may not be issued in any city that prohibits commercial cannabis activity.

D. On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity can occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede

or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to cannabis businesses beginning January 1, 2018.

E. On September 12, 2017, the Planning Commission of the City of Monrovia held a public hearing on this proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing.

F. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2017-02 recommending that the City Council adopt the proposed Ordinance to prohibit commercial cannabis activity and uses except for laboratory testing and manufacturing facilities, to prohibit outdoor cannabis cultivation, and to regulate indoor cannabis cultivation consistent with State law.

G. On \_\_\_\_\_, 2017, the City Council of the City of Monrovia held a public hearing on the proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony the City Council closed the public hearing.

H. The proposed Ordinance is consistent with the General Plan.

I. All legal prerequisites to the adoption of this Ordinance have occurred.

**SECTION 2.** The ordinance is considered a “project” pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (14 CCR § 15000 et seq.). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity, except for laboratory testing facilities, will have a significant effect on the environment since these uses will be located in zones that allow manufacturing uses. The project is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20% that do not result in any changes in land use or density. Since the project is prohibiting all commercial cannabis uses, except for laboratory testing and manufacturing facilities in zones that allow for manufacturing uses, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. The City



Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

**SECTION 3.** The City Council of the City of Monrovia hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance as if fully set forth herein.

**SECTION 4.** The City Council of the City of Monrovia hereby amends Section 5.04.030 (Definitions) of Chapter 5.04 (General Provisions) of Title 5 (Business Taxes, Licenses and Regulations) to delete the definitions of “Delivery,” “Marijuana,” “Medical marijuana product,” “Medical marijuana store, dispensary, or coop,” and “Mobile marijuana dispensary”.

**SECTION 5.** Chapter 5.96 (Marijuana Dispensary, Store, or Co-Op) of Title 5 (Business Taxes, Licenses and Regulations) is hereby amended in its entirety to read as follows:

**CHAPTER 5.96 CANNABIS REGULATIONS**

- Section 5.96.010 Purpose.**
- Section 5.96.020 Definitions.**
- Section 5.96.030 Prohibited activities.**
- Section 5.96.040 Exceptions.**
- Section 5.96.050 Violation, penalty.**

**5.96.010 Purpose.**

The purpose of this chapter is to expressly prohibit all commercial cannabis activity, except for laboratory testing and manufacturing facilities, in the city. The city’s prohibition of such activity is within the authority conferred upon the city council by State law and is an exercise of its police powers to enact and enforce regulations for the public health, safety, and welfare of the city and its community.

**5.96.020 Definitions.**

For purposes of this chapter, the following words and phrases have the same meanings set forth in the MAUCRSA and also as set forth below.

A. “Cannabis” means all parts of the plant *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 cannabis. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes. “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. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5.

B. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, packaging, labeling, transportation, delivery or sale (as those terms are defined in California Business and Professions Code section 26001, as the same may be amended from time to time) of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. “Commercial cannabis activity” does not include (1) laboratory testing or manufacturing facilities that are licensed by the State, and that are not open to the general public and that do not engage in any other “commercial cannabis activity” as defined herein, except for the possession, storing, packaging, distribution, and labeling of cannabis or cannabis product; or (2) the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient (as that term is defined in California Health and Safety Code section 11362.7) for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person; or (3) the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver (as that term is defined in California Health and Safety Code section 11362.7), but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

C. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by retailer.

D. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between licensees.

E. “Laboratory testing facility” shall have the same meaning as “Testing Laboratory” as defined in Business and Professions Code section 26001, as the same is amended from time to time, and also means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products and that is both accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state, and is a licensee.

F. “Licensee” means a person who holds a State license issued by the Bureau of Cannabis Control, or other State licensing authority that issues licenses to cannabis businesses.

G. “Manufacturing facility” shall have the same meaning as “Manufacturer” as defined in Business and Professions Code section 26001, as the same is amended from time to time, and also means a facility that is a licensee, and that conducts the

production, propagation, or compounding of cannabis or cannabis product either directly or indirectly or by extraction methods, or independently by means of chemical syntheses, or by a combination of extraction and chemical syntheses at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its containers.

H. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

I. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, collective, cooperative, club, society, organization, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

#### **5.96.030 Prohibited activities.**

A. Commercial cannabis activity, whether or not for profit, is prohibited in the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city.

B. Except as otherwise set forth in this Section, Subsection A above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Except as otherwise set forth in this Section, the city shall not issue a business license for any activity for which a State license is required under the MAUCRSA, or any other provision of State law that permits the licensing of cannabis businesses. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

C. The city may issue a business license to a cannabis laboratory testing facility or a manufacturing facility that is (1) licensed by the State, (2) that is not open to the general public, (3) that does not engage in any other “commercial cannabis activity” as defined herein, except for the possession, storing, packaging, distribution, or labeling of cannabis or cannabis product, (4) and that meets all the requirements set forth in Section 17.44.104.

D. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

#### **5.96.040 Exceptions.**

A. Nothing in this chapter shall prohibit a person 21 years of age or older from engaging in any activities authorized under California Health and Safety Code section 11362.1.

B. Nothing in this chapter shall prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant Business and Professions Code section 26054(c) and (d), as the same may be amended from time to time, or any other provision of the MAUCRSA.

**5.96.050 Violation, penalty.**

In addition to any other enforcement permitted by this chapter or Chapter 1.16 of the Monrovia Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapter 1.16 of the Monrovia Municipal Code, this Chapter 5.96 does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 *et seq.* or Section 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Chapter 1.16 of the Monrovia Municipal Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern."

**SECTION 6.** The City Council of the City of Monrovia hereby amends Section 17.44.104 of Chapter 17.44 (Special Uses) of Title 17 (Zoning) in its entirety to read as follows:

**SECTION 17.44.104 COMMERCIAL CANNABIS USES AND CULTIVATION**

A. *Purpose.* The purpose of this section is to expressly prohibit the establishment of commercial cannabis uses and cannabis cultivation in the city, to the extent not preempted by State law. Nothing in this chapter shall preempt or make inapplicable any provision of State or Federal law. The city council finds that the prohibitions on commercial cannabis uses, outdoor cannabis cultivation, and indoor cultivation of cannabis except under limited circumstances consistent with State law are necessary for the preservation and protection of the public health, safety, and welfare of the city and its community. The city council's prohibition of such uses is within the authority conferred upon the city council by State law and is an exercise of its police powers to enact and enforce regulations for the public benefit, safety, and welfare of the city and its community.

B. *Definitions.* For purposes of this chapter, the following words and phrases have the same meanings set forth in the MAUCRSA and also as set forth below.

1) "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.

2) “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, packaging, labeling, transportation, delivery or sale (as those terms are defined in California Business and Professions Code section 26001, as the same may be amended from time to time) of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses. “Commercial cannabis activity” does not include (1) a laboratory testing or manufacturing facility that is licensed by the State, that is not open to the general public, and that does not engage in any other “commercial cannabis activity” as defined herein, except for the possession, storing, packaging, distribution, or labeling of cannabis or cannabis product; or (2) the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient (as that term is defined in California Health and Safety Code section 11362.7) for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person; or (3) the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver (as that term is defined in California Health and Safety Code section 11362.7), but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

3) “Commercial cannabis uses” means any use of property for commercial cannabis activity.

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

5) “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between licensees.

6) “Dwelling” shall have the same meaning as defined in Section 17.04.080. “Dwelling” also means a “private residence” as defined by California Health and Safety Code section 11362.2(b)(5) as the same may be amended from time to time.

7) “Fully enclosed and secure structure” means a 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, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

8) “Indoors” means within a fully enclosed and secure structure.

9) “Licensee” means a person who holds a State license issued by the Bureau of Cannabis Control or other State licensing authority that licenses cannabis businesses.

10) “Manufacturing facility” shall have the same meaning as “Manufacturer” as defined in Business and Professions Code section 26001, as the same is amended from time to time, and also means a facility that conducts the production, propagation, or compounding of cannabis or cannabis product either directly or indirectly or by extraction methods, or independently by means of chemical syntheses, or by a combination of extraction and chemical syntheses at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its containers.

11) “Outdoors” means any location that is not within a fully enclosed and secure structure.

12) “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, collective, cooperative, club, society, organization, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

#### C. Prohibited Uses.

1) Commercial cannabis uses are expressly prohibited in all zones and all specific plan areas in the city. No person shall establish, operate, maintain, conduct or allow commercial cannabis uses anywhere within the city.

2) Outdoor cannabis cultivation is expressly prohibited in all zones and all specific plan areas in the city. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating cannabis outdoors.

3) Indoor cannabis cultivation, including cultivation by a primary caregiver or qualified patient (as those terms are defined in California Health and Safety Code section 11362.7, as the same is amended from time to time) is prohibited except in strict compliance with subsection E below.

#### D. Exceptions.

1) Nothing in this chapter shall prohibit a person 21 years of age or older from engaging in any activities authorized under California Health and Safety Code section 11362.1.

2) Nothing in this chapter shall prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant Business and Professions Code section 26054(c) and (d), as the same may be amended from time to time, or any other provision of the MAUCRSA.

E. Laboratory Testing and Manufacturing Facilities.

1) Laboratory Testing and Manufacturing Facilities may be located in the Manufacturing, O/RD/LM and Business Enterprise zones only.

2) Laboratory Testing and Manufacturing Facilities shall not engage in the sale of cannabis or cannabis products to the general public.

F. Indoor cannabis cultivation.

Cannabis cultivation shall only occur indoors in a dwelling, or inside an accessory structure located upon the grounds of dwelling, in strict conformance with the following standards:

1) Only a person who is at least 21 years old may cultivate cannabis, and the cannabis cultivation areas shall not be accessible to persons under 21 years of age.

2) Cannabis cultivation is permitted only within fully enclosed and secure structures.

3) Cannabis cultivation shall be limited to six plants total, regardless of how many persons over the age of 21 reside at the dwelling.

4) The use of CO<sub>2</sub> and Ozone generators for cannabis cultivation or processing is prohibited.

5) The use of compressed gases, including but not limited to carbon dioxide and butane, for cultivation or processing is prohibited

6) Cannabis cultivation shall not be visible from the public right of way or any privately owned place open to the public.

7) The dwelling shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress.

8) Any structure used for the cultivation of cannabis shall not become a public nuisance to surrounding properties or the public. A public nuisance may be deemed to exist if the cultivation produces odors which are detectable to people of normal sensitivity residing or present on adjacent or nearby property or on a public right of way. No person shall cultivate cannabis in any manner that causes any of the following conditions: light, glare, heat, odor, noise, mold or vibration that is or whose effect is either detrimental to public health, safety, or welfare or that interferes with the reasonable enjoyment of life or property.

9) A portable fully functional fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the residence.

10) Cultivation of cannabis shall not displace required off street parking.

11) All electrical equipment used in the cultivation of cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired.

G. *Enforcement.* In addition to any other enforcement permitted by Chapter 1.16 of the Monrovia Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapter 1.16 of the Monrovia Municipal Code, this Section 17.44.104 does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 *et seq.* or Section 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Chapter 1.16 of the Monrovia Municipal Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern."

**SECTION 7.** 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 8.** 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 penalty or the penal provisions applicable to any violation thereof.

**SECTION 9.** This Ordinance shall take effect thirty (30) days after its final passage and adoption. A summary of this Ordinance shall be published and a certified copy of the full text of this proposed Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which this proposed Ordinance is to be adopted. Within fifteen (15) days after adoption of this Ordinance, the City Clerk is instructed to publish a summary of this Ordinance with the names of those City Council members voting for and against this Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of those City Council members voting for and against this Ordinance or amendment at least until the day of such publication.



**INTRODUCED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Tom Adams, Mayor  
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

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Alice D. Atkins, CMC, City Clerk  
City of Monrovia

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Craig A. Steele, City Attorney  
City of Monrovia

## PLANNING COMMISSION RESOLUTION NO. 2017-02

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONROVIA, CALIFORNIA, RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ORDINANCE NO. 2017-05 AMENDING TITLE 5 OF THE MONROVIA MUNICIPAL CODE TO PROHIBIT THE ISSUANCE OF A BUSINESS LICENSE FOR ALL COMMERCIAL CANNABIS ACTIVITY EXCEPT FOR LABORATORY TESTING AND MANUFACTURING FACILITIES, AND AMENDING TITLE 17 OF THE MONROVIA MUNICIPAL CODE TO PROHIBIT COMMERCIAL CANNABIS USES EXCEPT FOR LABORATORY TESTING AND MANUFACTURING FACILITIES, OUTDOOR CANNABIS CULTIVATION, AND TO REGULATE INDOOR CANNABIS CULTIVATION ON DWELLINGS CONSISTENT WITH STATE LAW, AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTIONS 15061(b)(3) AND 15035 OF THE CEQA GUIDELINES**

### RECITALS

(i) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State licensing scheme for commercial medical cannabis businesses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

(ii) On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA added Division 10 (Marijuana) to the California Business & Professions Code, Sections 26000 *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. Although a State license may not be issued in any city that prohibits commercial cannabis activity.

(iii) On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity can occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to cannabis businesses beginning January 1, 2018.

(iv) On September 12, 2017, the Planning Commission of the City of Monrovia held a public hearing on proposed Ordinance No. 2017-05, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing.

(v) At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2017-02 recommending that the City Council adopt the proposed Ordinance No. 2017-05 to prohibit commercial cannabis activity and uses except for laboratory testing and manufacturing facilities, to prohibit outdoor cannabis cultivation, and to regulate indoor cannabis cultivation consistent with State law.

(vi) The ordinance is considered a “project” pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines (14 CCR § 15000 et seq.). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity, except for laboratory testing facilities, will have a significant effect on the environment since these uses will be located in zones that allow manufacturing uses.. The project is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20% that do not result in any changes in land use or density. Since the project is prohibiting all commercial cannabis uses, except for laboratory testing and manufacturing facilities in zones that allow for manufacturing uses, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations.

(iv) The custodian of records for all materials that constitute the record of proceeding upon which this decision is based is the Planning Division Manager. Those documents are available for public review in the Planning Division located at 415 South Ivy Avenue, Monrovia, California 91016.

(vii) The proposed Ordinance is consistent with the General Plan.

(viii) All legal prerequisites to the adoption of this Ordinance have occurred.

## **RESOLUTION**

**NOW, THEREFORE**, the Planning Commission of the City of Monrovia hereby finds, determines and resolves as follows:

1. The Planning Commission finds that all of the facts set forth in the Recitals, of this Resolution are true and correct.
2. Adoption of Ordinance No. 2017-05 will not have a significant effect on the environment.
3. The project is in conformance with the environmental goals and policies adopted by the City and is consistent with the Monrovia General Plan.
4. Ordinance No. 2017-05 will not adversely affect the public health, safety, or welfare in that it will provide for orderly and consistent development in the City.

5. Based upon the findings and conclusions set forth above, the Planning Commission hereby recommends approval of Ordinance 2017-05 to the City Council set in "Exhibit A" attached hereto and incorporated herein by this reference.

The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

**PASSED, APPROVED AND ADOPTED** this 12<sup>th</sup> day of September, 2017.

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Robert Parry, Chair  
Monrovia Planning Commission

**ATTEST:**

**APPROVED AS TO FORM:**

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Craig Jimenez, AICP, Secretary  
Monrovia Planning Commission

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Carol Lynch, Assistant City Attorney  
City of Monrovia