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DRAFT
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH AMENDING THE CHAPTER
5. BUSINESS LICENSES AND REGULATIONS OF THE HUNTINGTON BEACH
MUNICIPAL CODE BY ADDING SECTION 5.130 TO PERMIT AND REGULATE A
LIMITED NUMBER OF COMMERCIAL CANNABIS BUSINESSES

WHEREAS, in November 2016, a majority of the voters of the City of Huntington Beach voted in favor of Proposition 64, which legalized the recreational adult use of cannabis in California for individuals twenty-one (21) years of age and older. Since the passage of Prop 64 and the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), the State and other cities have developed regulations and licensing structures; and

WHEREAS, in June 2017, the California Legislature passed Senate Bill (SB) 94 repealing Medical and Adult Use Cannabis Regulation Act (MAUCRSA) entirely and merged certain portions of that law with AUMA to create a more comprehensive regulatory structure for both medicinal and adult-use cannabis; and

WHEREAS, SB 94 created a new comprehensive regulatory system for all Commercial Cannabis Activities; and

WHEREAS, the City of Huntington Beach has the constitutional charter City authority to enact nuisance, health, and safety, and land use regulations regarding Commercial Cannabis Activities; and

WHEREAS, the City of Huntington Beach has historically prohibited all forms of all Commercial Cannabis Activities anywhere in the City notwithstanding State Law requirement to allow the indoor cultivation of six or fewer non-medical marijuana plants in private residences; and

WHEREAS, in November and December 2021, two separate initiative petitions to legalize the manufacture and sale of cannabis were filed by private parties with the City Clerk's office. If passed, the initiatives would remove regulatory control from the City cannabis; and

WHEREAS, the City Council wishes to maintain the City's ability to develop important policy positions, business and land use regulations to preserve the quality of life for Huntington Beach residents, visitors, and business community; and

WHEREAS, the City Council established a three-member Ad-hoc subcommittee in December 2021 to work with the staff, cannabis industry, and stakeholders to assess best practices and provide recommendations for an Ordinance to set the regulatory framework for cannabis businesses. The recommendations were presented to the City Council on

February 15, 2022; and

WHEREAS, on March 1, 2022, the City Council voted to place a ballot measure on the July 7, 2022 Primary Election, also known as, Measure A, asking voters whether or not to adopt a Special Tax on Cannabis retail and non-retail business.

WHEREAS, the City now wishes to create a comprehensive, regulatory structure to allow for medicinal and adult-use cannabis businesses in Huntington Beach in accordance with this Chapter and state law that in part, mitigates potential negative impacts, prevents cannabis from reaching minors or the illicit market, preserves public health and safety, protects the environment, drives diverse economic opportunities, and implements the City's General Plan; and

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 5. Business License and Regulations of the Huntington Beach Municipal Code will be hereby amended and a new Section 5.130 of the Huntington Beach Municipal Code shall be added.

**HUNTINGTON BEACH MUNICIPAL CODE
CHAPTER 5.130. CANNABIS BUSINESS REGULATION**

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5.130.010 Purpose

This Chapter creates a Cannabis Business regulatory structure that is consistent with the Medicinal Adult-Use Cannabis Recreation and Safety Act, Business and Professions Code §§ 26000, *et seq.*, (hereinafter, “MAUCRSA”), as well as land use regulations to protect the City’s neighborhoods, residents, and businesses from negative impacts. Further, this Chapter will regulate the indoor cultivation, manufacturing, processing, testing, distribution, transportation, retail sale and delivery of cannabis and cannabis-related products in a manner that is responsible and protects the health, safety, and welfare of the residents of Huntington Beach, and that is consistent with the rules and regulations imposed by State Law.

Nothing in this Chapter is intended to allow persons to engage in conduct that endangers others or constitutes a public nuisance. The requirements of this Chapter are in addition to any other permits, licenses or approvals required to conduct business in Huntington Beach or under State, County, or other law.

5.130.020 Fees and Taxes

All Commercial Cannabis Facilities shall pay all applicable fees and taxes including the following:

- A. **Commercial Cannabis Permit Deposit.** Applicants shall submit a refundable deposit to secure the permit application in a fixed amount set by council resolution. The deposit shall be returned in full to the Applicants 30 days from the approval or denial of the permit application. An interest incurred during the application and review process shall be retained by the City.
- B. **Commercial Cannabis Permit Application Fees.** Applicants shall pay a non-refundable fee as set by council resolution to cover the cost of processing an application or amended application for a Commercial Cannabis Permit.
- C. **Commercial Cannabis Permit Renewal Fees.** Applicants for renewal permits shall submit a non-refundable fee as set by council resolution to cover the cost of processing an application or amended application for annual renewal of the Commercial Cannabis Permit.
- D. **Business License Taxes.** A Commercial Cannabis Business shall at all times maintain a current and valid City of Huntington Beach business license and shall pay all business license taxes prior to receiving a Cannabis Permit.
- E. **Cannabis Business Tax or Business Tax.** A Commercial Cannabis Business shall pay special taxes levied for engaging in a Cannabis Business in the City, approved by the voters of the City of Huntington Beach.
- F. All required federal and State taxes.

G. All required transfer taxes and/or fees.

5.130.030 Commercial Cannabis Authorization and Restriction

A. Minimum Standards Applicable to Commercial Cannabis Activity

Any standards, requirements, and regulations established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Huntington Beach to all Commercial Cannabis Activity.

B. Unauthorized Commercial Cannabis Activities Prohibited

Except as specifically authorized by this Chapter, the commercial Cultivation, dispensing, Manufacturing, Processing, storing, laboratory testing, labeling, sale, Delivery, Distribution or transportation (other than provided under Bus. & Prof. Code section 2609(e)), of Cannabis or Cannabis Products is expressly prohibited in the City of Huntington Beach.

C. Compliance with Laws

Nothing in this Chapter shall be construed as authorizing any actions that violate federal, State or local law with respect to the operation of a Commercial Cannabis Facility. It shall be the responsibility of the Owner(s) and/or operator(s) of a Commercial Cannabis Facility to ensure that the Facility is, at all times, operating in a manner compliant with all applicable federal, State and local laws, as they may be augmented or amended from time to time, as well as any specific, additional operating procedures or requirements which may be imposed as conditions of approval of a Commercial Cannabis Permit.

D. Conflict of Law

This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, resolution, regulation, statute or other provision of law. In the event of any conflict between the provisions of this Chapter and any other applicable State or local law or regulation, the most restrictive provision shall control.

5.130.040 Definitions

When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. The definitions of terms below shall be consistent with the definitions contained in the MAUCRSA. Any term used in this Chapter that is not defined below shall have the same meaning contained in the MAUCRSA.

- A. **Applicant.** A person or entity applying for a Commercial Cannabis Permit. In the context of an annual renewal, Applicant shall mean a person or entity applying to renew a Permit.

- B. Application Period. A period beginning when an application for a Commercial Cannabis Permit is received by the City and ending when the application is considered to be administratively complete and any applicable fees have been paid.
- C. Cannabis. 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” shall not include “industrial hemp,” unless otherwise specified.
- D. Cannabis Business. A person or entity engaged in Commercial Cannabis Activity.
- E. Cannabis Event. A public or private event where compensation is provided or exchange, either directly or indirectly or as part of an admission or other fee for service, for the provision, hosting, promotion or conduct of the event where consumption of cannabis is part of the activities.
- F. Cannabis Product. Raw Cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis Product" also means Cannabis Products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal Cannabis Products.
- G. City Manager. The City Manager of the City of Huntington Beach or his or her designee.
- H. Commercial Cannabis Activity. Having the same meaning as set forth in Business and Professions Code § 26001, as it may be amended from time to time. Commercial Cannabis Activity includes Cultivation, possession, Manufacture, Distribution, Processing, storing, laboratory testing, packaging, labeling, transportation, Delivery, or sale of Cannabis and Cannabis Products.
- I. Commercial Cannabis Facility. A business that has obtained a Commercial Cannabis Permit from the City of Huntington Beach to conduct a Commercial Cannabis Activity, and that is subject to the regulations set forth in State Law and this Chapter.
- J. Commercial Cannabis Operating Agreement. An agreement, in a form approved by the City Attorney, entered into by and between the City and a Commercial Cannabis Facility governing the operation of the Facility which shall, among other things, specify terms for local hiring and sourcing, community benefits, public safety, and payment of fees and other charges to compensate the City for impacts on City services, and such other terms and conditions as will protect and promote the public health, safety, and welfare.

- K. Commercial Cannabis Permit or Permit. A regulatory permit issued by the City pursuant to this Chapter to a Commercial Cannabis Business, and which is required before any Commercial Cannabis Activity may be conducted in the City. The initial permit and annual renewal of a Commercial Cannabis Permit is made expressly contingent upon the business' ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the Commercial Cannabis Activity at issue.
- L. Commercial Cannabis Regulations. The regulations issued by the City Manager and approved by [TBD] relating to the application or renewal of a Commercial Cannabis Permit and/or the oversight and operation of Commercial Cannabis Facilities in the City.
- M. Commercial Day Care Center. Having the same meaning set forth in the Huntington Beach Zoning and Subdivision Ordinance Section 204.08 F. Large-Family Day Care and 204.08 G. General Day Care. Section 204.06 A. Limited Day Care is excluded.
- N. Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis and includes, but is not limited to, the operation of an indoor, outdoor, mixed light, or nursery. All Outdoor Cultivation including mixed light and nursey shall be prohibited in the City.
- O. Cultivator. A Licensee that engages in Cultivation activities.
- P. Delivery. The commercial transfer of Cannabis or Cannabis Products to a customer located at a physical address. "Delivery" also includes the use by a Retailer of any technology platform used to transfer or sell Cannabis other than at the Retail Facility.
- Q. Distribution. Activities including the procurement, sale, and transport of Cannabis and Cannabis Products between other licensed Cannabis Businesses.
- R. Distributor. A Licensee that engages in Distribution activities.
- S. Eligibility List. A list of applicants who have met all the minimum qualifying requirements set forth by the City to be considered for further Commercial Cannabis Permit approval process.
- T. Employee. Each and every person engaged in the operation or conduct of any business, whether as Owner, member of the Owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.
- U. Hearing Officer. Having the same meaning set forth in Section 1.18.020 of the Huntington Beach Municipal Code.

- V. Indoor Cultivation. The Cultivation of Cannabis inside a permanent enclosed building or structure.
- W. Labor Peace Agreement. A written agreement between an Owner and any bona fide labor organization that, at a minimum, prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the Owner's business. This agreement means that Owner has agreed not to disrupt efforts by the bona fide labor organizer to communicate with, and attempt to organize and represent the Owner's employees. The Agreement shall provide the bona fide labor organizer access at all reasonable time to areas in which Owner's Employees work, for the purpose of meeting with Employees to discuss their right to representation, employment rights under State Law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.
- X. License or State License. A license issued by the State of California pursuant to California Business and Professions Code Section 26050 and all other applicable State Laws required for operating a Cannabis Business.
- Y. Licensee. An individual or entity that has obtained a State License.
- Z. Manufacture or Manufacturing. The production, preparation, propagation, or compounding of Cannabis or Cannabis Products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages Cannabis or Cannabis Products or labels or relabels their containers.
- AA. Manufacturer. A Licensee that engages in Manufacturing activities.
- BB. Microbusiness. A single business to integrate more than one (1) of the permitted types of Cannabis Businesses and engage in such Commercial Cannabis Activities in the City from one permitted premises.
- CC. Outdoor Cultivation. The Cultivation of Cannabis outside a permanent enclosed building or structure.
- DD. Owner. Having the same meaning as set forth in Business and Professions Code section 26001(am), as it may be amended from time to time, and shall generally mean an individual or entity with at least a twenty percent (20%) Ownership interest in a business engaged in Commercial Cannabis Activity.
- EE. Parks. Having the same meaning set forth in the Huntington Beach Zoning and Subdivision Ordinance Section 204.08 N.
- FF. Permittee. The holder of a valid City-issued Commercial Cannabis Permit.

- GG. Premise. A designated structure(s) and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.
- HH. Processing. A Cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of Cannabis, industrial hemp and non-manufactured Cannabis Products.
- II. Responsible Person. Having the same meaning set forth in Section 1.18.020 of the Huntington Beach Municipal Code.
- JJ. Retail, Retailer, or Retail Facility. A licensed premises where Cannabis, Cannabis Products, or devices for the use of Cannabis or Cannabis Products are offered, either individually or in any combination for Retail sale, including an establishment that delivers Cannabis or Cannabis Products as part of a Retail sale.
- KK. Schools. Having the same meaning set forth in the Huntington Beach Zoning and Subdivision Ordinance Section 204.08 Q.
- LL. State. The State of California.
- MM. Tax Administrator. The City Manager of the City of Huntington Beach or his or her designee.
- NN. Testing Laboratory. A Cannabis Business that (i) offers or performs tests of Cannabis and Cannabis Products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the Cannabis industry in the State; (v) is licensed by the California Department of Cannabis Control or other State agency required by law.
- OO. Track and Trace System. A program for reporting the movement of cannabis and cannabis products through the distribution chain established by the California Department of Cannabis Control in accordance with section 26067 of the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
- PP. Youth Center. Any public or private facility that is primarily used to host recreational or social activities for minors such as private youth membership organizations, nonprofit organizations primarily serving youth, or clubs, social service teenage club facilities. “Youth Center” shall not include any private martial arts, yoga, ballet, music or similar studio of this nature nor shall it include any private athletic training facility, pizza parlor, restaurant, video arcade, or doctor’s office primarily serving children.

5.130.050 Procedures to Conduct Commercial Cannabis Activity at a Commercial Cannabis Facility

A. Commercial Cannabis Permit Required.

A Commercial Cannabis Permit shall be required for each type of Commercial Cannabis Activity. Only one Permit type per Owner shall be issued.

In order to operate in the City, Commercial Cannabis Businesses must also obtain:

- 1) A valid City business license to conduct such business or activity;
- 2) A valid Commercial Cannabis Permit issued by the City of Huntington Beach pursuant to this Chapter;
- 3) A valid Cannabis License issued by the State of California authorizing such business or activity in the City;
- 4) A valid certificate of occupancy issued by the City's Community Development Department to conduct the Commercial Cannabis Activity at the premises identified in the permit; and
- 5) Commercial Cannabis Operating Agreement with the City.

B. Commercial Cannabis Operating Agreement Required.

Applicants for a Commercial Cannabis Permit shall be required to enter into a Commercial Cannabis Operating Agreement with the City setting forth the contractual obligations under which the Commercial Cannabis Facility will operate that are in addition to any and all other requirements of this Chapter.

C. Application Process and Requirements

- 1) [TBD: The City Manager or the City Council] is authorized to prepare and promulgate a City's Commercial Cannabis Regulations that govern the application process and requirements.
- 2) Any individual or entity that seeks to operate a Commercial Cannabis Facility shall submit an application on a form prepared by the City together with a non-refundable application fee established by resolution of the City Council.
- 3) Application Submittal Time Frame: the Application Period(s) will be established by the City Manager. Any individual may only submit one application per permit type, per Application Period, for a Commercial Cannabis Permit.
- 4) In part, any individual or entity that seeks to operate a Commercial Cannabis Facility must meet the following MIMIMUM qualifications to be placed on the Eligibility List:
 - a. All application documents completed and submitted within the Application Period and applicable fees paid.
 - b. Sworn affidavit and evidence that the proposed location of the Cannabis Business on the application meets the zoning criteria established in this Chapter and in the zoning code.

- c. Proof of Ownership or control of the site upon which the Cannabis Business is to operate.
- d. Proof of having at least 4 current Commercial Cannabis Business permits or licenses (various types) in California, one of which must be retail.
- e. A refundable security deposit of a fixed amount set forth by the City Council via resolution.
- f. Proof of having identified at least one 501(c)(3) nonprofit organization who has been in operation for three (3) years as a local philanthropy partner that benefits the City of Huntington Beach.
- g. Demonstrate that the Permittee has all applicable federal, State, county or City license or permits, etc.

Applications that do not meet such minimum qualifying requirements will not receive further consideration in the approval process. Applications on the Eligibility List shall be reviewed by the City Manager in accordance with the standards and criteria set forth in the City's Commercial Cannabis Regulations. Because the Commercial Cannabis Permit confers no property interest, the Applicant is hereby informed that the City Manager at his or her sole discretion may approve or deny a permit Applicant.

Notwithstanding, when reviewing the applications for ultimate permit approval, such review will be based on a merit point system or equivalent quantitative evaluation scale tied to each set of review criteria as further defined in this ordinance or regulations, including but not limited to:

- a. Ownership structure including all financial interest holders
- b. Owner qualifications including prior successful experience operating a commercial Cannabis Business in compliance with all local and State Law requirements
- c. Site plan / diagram of the premises
- d. Capitalization plan
- e. Business and operation plan that may include Employee training, ordering systems, and other standard operating procedures, including inventory control procedure, quality control procedure, transportation process, Cannabis waste management procedures, etc.
- f. Traffic/Circulation/Parking/Curbside Pick-up Plan
- g. Safety and security plan for the Commercial Cannabis Facility
- h. Community Benefit Plan
- i. Local Hire/Sourcing programs
- j. Labor Peace Agreement
- k. Other criteria established by the City's Commercial Cannabis Regulations.

- 5) The specific criteria and weighting (points per criteria) for each permit category will be determined prior to the commencement of the Application Period and posted publicly. The City's Commercial Cannabis Regulations shall establish a minimum qualification score threshold for Applicants to meet before issuing any permits.

- 6) The City Manager may establish a selection committee comprised of at least three evaluators from the City and/or external consultants who will review and score applications based on the criteria set forth, conduct interviews if necessary, and determine top applications in each permit category.
- 7) The City reserves the right to reject any or all applications. The City further reserves the right to request and obtain additional information from any Applicant submitting an application.

D. City Manager Authority to Approve or Deny Permit

The City Manager shall either deny, approve, or conditionally approve an application for a Commercial Cannabis Permit. The City Manager's decision shall be final. The City Manager shall provide the Applicant with written notice of his/her decision.

- 1) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.
- 2) If a Commercial Cannabis Permit is approved or conditionally approved, it shall be valid for a term of twelve (12) months from the date it is issued, unless renewed as provided in this Chapter. A Commercial Cannabis Permit does not confer any property interest, entitlement or vested right and shall not run with the land.
- 3) In addition to the Regulations, the City Manager has the authority to deny an application and/or reduce points awarded for a Commercial Cannabis Permit for the reasons, including but not limited to:
 - a. The Applicant has not provided the information required on the application form.
 - b. The Applicant has not met a minimum set of points required and set by the City's Commercial Cannabis Regulations.
 - c. The Applicant has falsified or made misrepresentations in the application.
 - d. The Applicant has previously failed to comply with any of the requirements set forth in this Chapter.
 - e. The Applicant has failed to comply with State Law and/or remit taxes as required by the Revenue and Taxation Code.
 - f. The Applicant has denied the City or the State access to the licensed premises.
 - g. The Applicant has previously operated an illegal Cannabis dispensary or business.
 - h. The approval could result in harm to the public health, safety, or welfare.

E. Expiration and Renewal Process and Requirements

- 1) A Commercial Cannabis Permit is valid for one (1) year from the date of issuance. It may not be transferred, does not run with the land, and is valid only at the original business site unless a transfer is approved by the City pursuant to the requirements of this Chapter and the Huntington Beach Zoning and Subdivision Code (HBZSO). Once a permit is obtained, the Permittee can apply annually for renewal. Renewal of permits is not guaranteed.

- 2) An application for renewal of a Commercial Cannabis Permit shall be filed at least sixty (60) calendar days, but not more than 120 calendar days, prior to the expiration date of the current Permit on an application renewal form prepared by the City Manager. The City's Commercial Cannabis Regulations shall set forth the renewal application process, including the applicable deadlines and renewal requirements. The renewal application shall generally request or require confirmation of information required for new applications, and may be subject to the same site inspection and City staff approvals required for new applications.
- 3) The Applicant shall pay a fee in an amount to be set by the City Council resolution to offset the cost of processing a renewal application, together with any costs incurred by the City to administer the program created under this Chapter. The City Council shall establish the renewal fee by resolution.
- 4) An application for renewal of a Commercial Cannabis Permit may be denied for any of the following reasons:
 - a. The application was filed less than sixty (60) days or more than 120 days before expiration of the Permit.
 - b. The Commercial Cannabis Permit or State License has been suspended or revoked at the time of the application.
 - c. The Commercial Cannabis Facility has not been in regular and continuous operation in the ninety (90) days prior to the renewal application.
 - d. The Applicant has failed to remit taxes as required under the Huntington Beach Municipal Code Chapter 5.25 Cannabis Business Tax.
 - e. The Commercial Cannabis Facility has failed to conform to the requirements of this Chapter, the City's Commercial Cannabis Regulations, its Commercial Cannabis Operating Agreement, the conditions imposed as part of zoning requirements, or State Law.
 - f. The Applicant fails or is unable to renew its State License.
 - g. For any of the reasons set forth in Chapter 5.130.050(E)(3).
- 5) The City Manager is authorized to make all decisions concerning the renewal of a Commercial Cannabis Permit. In determining whether to renew a Permit, the City Manager is authorized to impose additional conditions on the Permit, if deemed necessary to ensure compliance with State or local laws and regulations or to preserve the public health, safety or welfare.
- 6) The City Manager's decision to approve, conditionally approve, or deny an application to renew a Commercial Cannabis Permit may be appealed as provided in this Chapter.
- 7) If a renewal application is denied, a person may file an application for a new Permit pursuant to this Chapter no sooner than one (1) year from the date of the denial.

F. Revocation, Modification and Suspension Requirements.

- 1) Commercial Cannabis Permits may be suspended, revoked or modified by the City Manager based upon any of the following:
 - a. A violation of any State or local law, rule, regulation requirement and/or standard, including but not limited to the provisions of this Chapter, the City's Commercial Cannabis Regulations, the Commercial Cannabis Operating Agreement, or the Huntington Beach Municipal Code.
 - b. A determination that the Applicant falsified or misrepresented information on its Commercial Cannabis Permit application or renewal application.
 - c. An unauthorized transfer of Ownership or change of location of a Commercial Cannabis Facility.
 - d. A determination that there is an imminent threat to public health, safety, or welfare of the City.
- 2) Suspension of a State License shall immediately suspend the ability of a Commercial Cannabis Facility to operate within the City. The City may, at its sole and absolute discretion, reinstate the Commercial Cannabis Facilities Permit if the State reinstates or reissues the State License. Should the State revoke or terminate the License of a Commercial Cannabis Facility, such revocation or termination shall automatically revoke or terminate the Commercial Cannabis Permit and the ability of a Commercial Cannabis Facility to operate within the City of Huntington Beach. Upon notification by the State, a Permittee shall notify the City immediately in writing of State proceedings to revoke or suspend a State License. If a Permittee fails to do so, the City Manager may impose a daily fine not to exceed one thousand dollars (\$1,000) for each day notification is delayed.
- 3) The City Manager's determination to suspend, modify, or revoke a Commercial Cannabis Permit shall be effective immediately upon written notice from the City, and shall not be stayed in the event an appeal is filed.
- 4) The City Manager's determination to suspend, modify or revoke a Commercial Cannabis Permit may be appealed as provided in this Chapter.
- 5) During a period of license suspension, the commercial Cannabis Business shall remove from public view all Cannabis and Cannabis Products, and shall not conduct any Commercial Cannabis Activity.
- 6) Pursuant to Business and Professions Code Section 26200 (c), the City Manager or his or her designee shall promptly notify the California Department of Cannabis Control upon the City's revocation of any local license, permit, or authorization for a State Licensee to engage in Commercial Cannabis Activity within the City.

G. Transfer of Commercial Cannabis Facility or Permit

- 1) It shall be unlawful for any person to transfer a Commercial Business Permit to a location not specified on the permit, or to operate a Cannabis Business at any place or location other than that identified on the permit issued pursuant to this chapter.
- 2) Any transfer a Commercial Cannabis Permit, or change in the ownership, business structure, or operational control of a Commercial Cannabis Facility, either directly or indirectly, in violation of this section shall be null and void except the cases set forth by this chapter.
- 3) No transfer shall occur pursuant to this Section for three (3) years from the date a Permit was first issued to an Owner or operator of a Commercial Cannabis Facility.
- 4) No Owner or Permittee shall transfer his/her/its Ownership or control of a Commercial Cannabis Facility or any rights acquired under a Commercial Cannabis Permit, to another person without written notification to the City. Such notification shall be provided a minimum of sixty (60) days before the proposed transfer and shall be accompanied by a new Commercial Cannabis Transfer Permit application that contains the information required in the City's Commercial Cannabis Regulations, which shall be similar to the information required of Applicants for new Permits. The application must be scored above the lowest final average score of the successful Applicants from the previous Application Period and the minimum qualification score threshold.

Prior to or concurrent with the submission of said application the transferee shall obtain all required business licenses, post all required security deposits, acquire all necessary, certificates, permits or other licenses allowing the doing of any act that the person paying or holding the same would not otherwise be entitled to do; and any permit, license, variance or other instrument of approval or evidence that any conditions exist as required by any other section of this Code or by any statute or code provisions of the State must first be obtained or complied with before the doing of any act or thing for which it is required.

The City Manager shall have sixty (60) days from receipt of the required information to make a determination on the transfer request, which time shall not begin to run until a completed transfer application packet is submitted to the City. The City Manager may approve, deny, or conditionally approve the transfer request.

- 5) A fee as established by resolution of the City Council shall be payable for each such application involving transfer of any interest in an existing commercial Cannabis business. The provisions of this section shall apply to any person, firm, or entity applying for a Commercial Cannabis Permit for premises previously used as such establishment.
- 6) Any such transfer of any interest in an existing commercial Cannabis Business or any application for an extension or expansion of the building or other place of

business of the commercial Cannabis business shall require inspection and compliance set forth in this Chapter.

H. Relocation of Commercial Cannabis Facility

- 1) Neither a Commercial Cannabis Facility nor its Permit shall be transferred or relocated from one premises to another without the City Manager's prior written consent, which must be requested a minimum of ninety (90) days before the proposed relocation. The request will be processed in accordance with the City's Commercial Cannabis Regulations and the City Manager may require the Permittee to submit additional application materials for the new location. A Permittee shall not operate from a new location unless and until it applies for and receives written approval from the City Manager, who has discretion to approve, conditionally approve, or deny the request.
- 2) A transfer or relocation of a Commercial Cannabis Facility or its Permit from one premises to another in violation of this section shall be null and void and is grounds for suspension or revocation of the Permit.
- 3) Any transfer or relocation location that occurs pursuant to this Section shall be subject to a transfer fee that is established by the City Council by resolution.

I. Appeal Procedure

- 1) Qualification and ranking decisions of the City concerning any aspect of the qualification or ranking process to obtain a Commercial Cannabis Permit shall not be appealable and may not be challenged by writ or mandate to any superior court.
- 2) Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his/her designee(s), the appeal shall be conducted as prescribed in this Chapter.
- 3) Within ten (10) calendar days after the date of a decision of the City Manager or his/her designee(s) to revoke, suspend, or not to renew a Commercial Cannabis Permit, a Permittee may appeal such action by filing a written appeal with the City Clerk setting forth the reasons for contesting the decision.
- 4) At the time of filing, the appellant shall pay the designated appeal fee established by resolution of the City Council.
- 5) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City's Hearing Officer. The Hearing Officer shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.

- 6) The appeal shall be held within a reasonable time after the date the appeal is filed. The City shall notify the appellant of the time and location of the hearing at least ten (10) days prior to the date of the hearing.
- 7) At the hearing, the appellant may present any information it deems relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.
- 8) At the conclusion of the hearing the Hearing Officer may affirm, reverse or modify the decision appealed. The decision of the Hearing Officer shall be final.

5.130.060 Number of Commercial Cannabis Permits & Location

A. Maximum Number of Commercial Cannabis Permits

The City Manager shall be authorized to issue the following number of Commercial Cannabis Permits for each type of Commercial Cannabis Activity:

- 1) Retail: Up to 10 total Commercial Cannabis Permits for storefront Retailer, Delivery only, and storefront/Delivery Retailers may be issued. No more than one (1) Retail Permits shall be issued to the same Owner(s).
- 2) Indoor Cultivation: There shall be no limit on the number of Cannabis Business Permits issued for Indoor Cultivation. No more than one (1) Indoor Cultivation Permits shall be issued to the same Owner(s). A Commercial Cannabis Permit for Indoor Cultivation shall not authorize any individual to engage in any Outdoor Cultivation.
- 3) Manufacturing: There shall be no limit on the number of Cannabis Business Permits issued for Cannabis Manufacturing. No more than one (1) Manufacturing Permits shall be issued to the same Owner(s).
- 4) Distribution: There shall be no limit on the number of Cannabis Business Permits issued for Cannabis Distribution. No more than one (1) Distribution Permits shall be issued to the same Owner(s).
- 5) Testing Laboratories: There shall be no limit on the number of Cannabis Business Permits issued for Cannabis Testing Laboratories. No more than one (1) Testing Laboratory Permits shall be issued to the same Owner(s).
- 6) Outdoor Cultivation including but not limited to cultivation in greenhouses, hoop structures, and by mixed light: Prohibited
- 7) Microbusiness: Prohibited.

B. Location and Separation Requirements

A Commercial Cannabis Facility must meet the Separation Requirements (Permitted Zones and Separation Requirements) set forth by the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Section 204.18 to obtain a valid Commercial Cannabis Permit and operate in the City.

5.130.070. Consumption or Use Prohibited on Site and In Public – Cannabis event prohibited.

A. It is unlawful for any person or entity:

- 1) To sell, give, exchange, dispense, or distribute Cannabis or Cannabis Products for on-site consumption, use, or sampling on any business premises except trade samples given to other Permittees as the State allows; or
- 2) To consume or use Cannabis or Cannabis Products, whether by smoking, vaping, inhaling, eating, drinking or any other means:
 - i. In, on or about the premises of any commercial Cannabis Business;
 - ii. In, on or about any publicly owned or operated property; any place open to or accessible by the public; any place smoking is prohibited; or any place visible from any public place with normal unaided vision;
 - iii. In, on, or about any other business, club, cooperative or commercial event, regardless if open to the public or only to members, ticket holders or event invitees;
 - iv. Any location where an entry or other fee is charged to attendees or to the host or where a thing of value or consideration is received or exchanged, directly or indirectly, for or related to the provision of Cannabis.

B. It is unlawful for any person to conduct a Cannabis Event in the City.

C. Outdoor Commercial Cannabis Activities prohibited. Outdoor storage, harvesting, drying, processing, or manufacturing of commercial Cannabis or Cannabis Products is prohibited.

5.130.080. Minors

A. No person under twenty-one (21) years of age shall be allowed on the premises of a commercial Cannabis Business even if accomplished by a parent or guardian.

B. No person, business, or other entity conducting a Commercial Cannabis Activity shall employ any person who is not at least twenty-one (21) years of age.

5.130.090. Sale of Cannabis Products or Cannabis accessories by vending machine prohibited.

- A. No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of, any cannabis vending machine used or intended to be used for the purpose of selling any Cannabis, Cannabis Products, or Cannabis accessories therefrom.
- B. No person, business, or other entity shall sell, offer for sale, or display for sale any Cannabis Product by means of a self-service display of vending machine. All cannabis products shall be offered for sale exclusively by means of vendor/employee assistance.

5.130.100. Regulations and Inspection

- A. Commercial Cannabis Regulations

[TBD: The City Manager or the City Council] is authorized to establish City's Commercial Cannabis Regulations governing the Commercial Cannabis Permit application and renewal criteria and processes, the regulation and oversight of Commercial Cannabis Facilities, the operational requirements imposed on such Facilities, and any other subject determined to be necessary to carry out the purposes of this Chapter. Compliance with the City's Commercial Cannabis Regulations is required to engage in Commercial Cannabis Activity, and failure to do so is grounds for revocation, suspension or non-renewal of a Commercial Cannabis Permit, as well as the other penalties set forth in this Chapter.

- B. Inspection

The City Manager is charged with enforcing the provisions of this Chapter and may enter the location of a Commercial Cannabis Facility at any time, without notice, and inspect the location of any Commercial Cannabis Facility as well as any records required to be maintained pursuant to this Chapter or under applicable provisions of State Law.

- C. Commercial Cannabis Facilities are subject to routine fire and life safety inspections at the inspection frequency identified in the Huntington Beach Fire Department's Community Risk Assessment.

5.130.110. Recordkeeping and Reporting

- A. Maintenance and City Access to Records: All records shall be maintained by the commercial Cannabis Business for a period of at least five (5) years and shall be made available by the commercial Cannabis Business to an authorized City of Huntington Beach representative upon request. In addition to all other formats that the commercial Cannabis Business may maintain, these records shall be stored by the business at the location in a printed format in a fire-proof safe or filing cabinet. Any loss, damage or

destruction of the records shall be reported to the Police Department within twenty-four (24) hours of the loss, destruction or damage.

- B. **Audit.** It shall be the duty of every Owner and operator of a Commercial Cannabis Business to keep all records as may be necessary to determine the amount of tax due hereunder. The Tax Administrator shall have the right to inspect such records at all reasonable times. At the time of permit renewal, each Owner and operator shall submit to the City a financial audit of the business's operations conducted by an independent certified public accountant. Each Permittee shall be subject to a regulatory compliance review and financial audit as determined by the Chief Finance Officer or his/her designee.
- C. **Owner & Employee Registry.** Each Owner and operator of a Commercial Cannabis Business shall maintain a current register of the names and the contact information of anyone owning or holding an interest in the business, and separately of all the officers, managers, Employees, agents, and volunteers currently employed or otherwise engaged by the business. The register shall be provided to the City upon a reasonable request.
- D. **Reporting and Tracking of Product and of Gross Sales.** All Commercial Cannabis Businesses shall create and maintain an active and functional account within the Track and Trace system prior to engaging in any Commercial Cannabis Activity. A commercial Cannabis Business must record all Commercial Cannabis Activity in such system as required by State Law.
- E. Each commercial Cannabis Business shall have in place a point-of-sale tracking system to track and to report on all aspects of the commercial Cannabis Business including, but not limited to, such matters as Cannabis tracking, inventory data, and gross sales (by weight and by sale) and shall ensure that such information is compatible with the City's recordkeeping systems. The system must have the capability to produce historical transactional data for review by the City. All information provided to the City pursuant to this subsection shall be confidential and shall not be disclosed, except as may otherwise be required under law.

5.130.120. Fees Deemed Debt to City of Huntington Beach

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City that is recoverable via an authorized administrative process as set forth in the Huntington Beach Municipal Code, or in any court of competent jurisdiction.

5.130.130. Permit Holder, Owners, Operators Responsible for Violations

The person to whom a Permit is issued pursuant to this Chapter, as well as each and every Owner and operator of a Commercial Cannabis Facility, shall be responsible for all violations of this Chapter, State Law, the Huntington Beach Municipal Code and/or of the City's Commercial Cannabis Regulations by the Facility, whether committed by the Permittee or any Employee or agent of the Permittee.

5.130.140. Violations Declared a Public Nuisance

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

5.130.150. Suspension of Service for City Purposes or for Violations of Law

1. The City reserves the right at any time to shut off the electric or water service for the purpose of making extensions or repairs or for other purposes. The City may discontinue water or electric service to any premises which is being used in violation of any ordinance of the City or of any law of the State of California or of the United States and shall not be required to re-establish the service until the unlawful use ceases and the fee for reconnection has been paid.
2. The City reserves the right to board any doors and windows associated with any Commercial Cannabis Activity operation that is observed to be operating without approval and issuance of a Commercial Cannabis Permit and Certificate of Occupancy.

5.130.160. Each Violation a Separate Offense

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Huntington Beach Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, with any Permit issued pursuant to this Chapter being deemed null and void, and the City entitled to disgorgement or payment of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City may also pursue any and all remedies and actions available and applicable under State and local laws for any violations committed by the Commercial Cannabis Facility Owner, operator or persons related to, or associated with, the Commercial Cannabis Facility.

Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the City Manager or the Chief of Police or his/her designee(s), may take immediate action to temporarily suspend a Commercial Cannabis Permit issued by the City, and close down the Commercial Cannabis Facility pending a hearing before the City Hearing Officer.

5.130.170. Criminal Penalties

Each and every violation of the provisions of this Chapter may, in the discretion of the City Attorney, be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for a period of not more than twelve (12) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

5.130.180 Administrative Penalties

The fine for violations of any provision of this chapter shall be one thousand dollars (\$1,000.00) for each violation. Each separate day in which a violation exists may be considered a separate violation.

The fine amounts set forth above may be modified, from time to time, by city council resolution. In no event shall such fine amounts exceed the amounts authorized by State law.

5.130.190 Remedies Cumulative and Not Exclusive

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

SECTION 2. Further, no Commercial Cannabis Permit applications shall be accepted by the City until administrative regulations and processes are approved by the City Manager and published on the City website.

SECTION 3. Severability. If any section of this Ordinance is determined to be unenforceable, invalid, or unlawful, such determination shall not affect the enforceability of the remaining provisions of this Ordinance.

SECTION 4. CEQA. This ordinance is exempt from the California Environmental Quality Act pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 5. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2022.