

CITY COUNCIL ORDINANCE NO. 18-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA AMENDING CHAPTER 3-39 OF THE IRVINE ZONING CODE (ENTITLED CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED) AND OTHER RELATED ZONING CODE SECTIONS TO ALLOW FOR CANNABIS TESTING LABORATORIES IN CERTAIN ZONING DISTRICTS (SECTIONS 1-2-1, 3-3-1, 3-37-29, 3-37-33, and 3-37-34)

WHEREAS, on October 9, 2015, Governor Brown signed three bills into law (AB 266, AB 243, and SB 643), which collectively are known as the Medical Marijuana Regulation and Safety Act (“MMRSA”) and which established a comprehensive state licensing scheme for commercial uses related to medicinal cannabis; and

WHEREAS, pursuant to the authority granted by the MMRSA, the City adopted Ordinance No. 16-01, and thereby prohibited all commercial marijuana activities, regardless of whether those activities related to medicinal or recreational uses; and

WHEREAS, since the adoption of Ordinance No. 16-01, the voters passed Proposition 64 or the Adult Use of Marijuana Act (“AUMA”) in November 2016, which established a similar state licensing scheme for adult use (i.e., non-medicinal) marijuana facilities; and

WHEREAS, after the passage of the AUMA, the Legislature adopted and the Governor signed into law SB 94, which is known as the Medicinal and Adult Use Cannabis Regulation and Safety Act (the “MAUCRSA”); and

WHEREAS, the MAUCRSA effectively consolidates the regulatory scheme provided for by the MMRSA (relating to medicinal marijuana) with the regulatory scheme provided for by the AUMA (relating to non-medicinal marijuana) to provide for one licensing structure for all cannabis related uses; and

WHEREAS, under the MAUCRSA, cities retain their ability to regulate medicinal and adult use commercial cannabis related uses; and

WHEREAS, the City Council continues to find that commercial cannabis activities, as defined by Business & Professions Code section 26001, subdivision (i), other than testing laboratories, can adversely affect the health, safety and well-being of City residents; and

WHEREAS, citywide prohibition of both medicinal and adult use commercial cannabis activities, other than testing laboratories, is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities; and

WHEREAS, the City Council also finds that testing laboratories for either medicinal or adult use marijuana shall be permitted in certain zoning districts in the City, as set forth below, and subject to the regulations contained in Title 4, Division 22 of the Irvine Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 7, 2017 at which time it considered all evidence presented, both written and oral, and at the of the hearing, voted to adopt a resolution recommending that the City Council adopt this ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on this Ordinance on January 23, 2018 at which it considered all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Irvine, California DOES HEREBY ORDAIN as follows:

SECTION 1. Recitals. The foregoing recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2. Authority. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, and the MAUCRSA.

SECTION 3: No Changes to Permitted Uses. Nothing in this Ordinance shall be interpreted to allow any land use which is not expressly listed as permitted or conditionally permitted within the City's Zoning Code.

SECTION 4: CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the adoption of the Zoning and 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. In addition, the adoption of the proposed ordinance is exempt under the California Environmental Quality Act pursuant to Business & Professions Code section 26055(h), because, if approved, the companion ordinance to this Zone Text Amendment will require all applicants to comply with CEQA prior to the issuance of the cannabis permit.

SECTION 5: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within 15 days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

SECTION 7. The following findings required by Section 2-38-7 of the City of Irvine Zoning Code for approval of a Zone Change have been made as follows:

1. The proposed Zone Change is consistent with the City of Irvine General Plan.

The purpose of the zone change is to allow cannabis testing laboratories as a permitted use in specific zoning districts. These laboratories would be limited to the following zoning districts, 5.1 IBC Multi-Use, 5.4 General Industrial, and 5.5 Medical and Science. Cannabis testing laboratories in these zoning districts and in the corresponding general plan land use designations are considered appropriate since this limits the opportunity to be located near sensitive land uses, such as schools and residences. Furthermore, these uses are more likely to be located in an existing research and development areas where similar testing of a product is being conducted as part of an established business. As such, this zone change is consistent with the goals and objectives of the City of Irvine General Plan.

2. The proposed Zone Change is consistent with any applicable concept plan.

This finding does not apply to the proposed zone change as there is not an applicable concept plan for a text amendment to the zoning code.

3. The proposed Zone Change meets all the requirements set forth within Division 8 for the dedication of permanent open space through a specified phased implementation program for affected planning areas and zoning districts.

This project is not subject to the phased permanent open space dedication implementation program set forth in Division 8-1.

4. The proposed Zone Change is in the best interest of the public health, safety and welfare of the community.

The City-initiated Zone Change is consistent with all applicable provisions of the Zoning Ordinance and is determined to be in the best interests of the health, safety and welfare of the community. The environmental impacts of the proposed Zone Change application are exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b) (3), which provides that CEQA applies only to projects that have the potential to cause a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. In addition, the adoption of the proposed ordinance is exempt under the California Environmental Quality Act pursuant to Business & Professions Code section 26055(h), because, if approved, the companion ordinance to this Zone Text Amendment will require all applicants to comply with CEQA prior to the issuance of the cannabis permit.

Therefore, the proposed Zone Change is consistent with and in the best interest of the public health, safety and welfare of the community.

5. Based upon information available at the time of approval, adequate sewer and water lines, utilities, sewage treatment capacity, drainage facilities, police protection, fire protection/emergency medical care, vehicular circulation and school facilities will be available to serve the area affected by the proposed City-initiated Zone Change when development occurs.

The proposed project does not include any specific development. The zone change is limited to a text amendment which would allow cannabis testing laboratories. These labs could be included with existing research and development businesses as both land uses include the testing of a product. As such the need for infrastructure would be minimal.

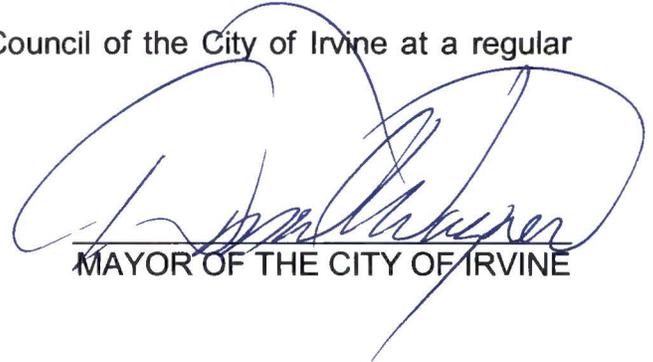
6. If the proposed Zone Change affects land located within the coastal zone, the proposed Zone Change will comply with the provisions of the land use plan of the certified local coastal program.

A small portion of the 5.1 Irvine Business Complex zone is located within the coastal zone. This portion of the zoning district will not be included in the zone change; therefore, no changes to the local coastal plan are required.

**SECTION 8.** Based on the above findings, the City Council of the City of Irvine DOES HEREBY APPROVE Zone Change 00728989-PZC amending the City's Zoning Ordinance as depicted in Exhibit A.

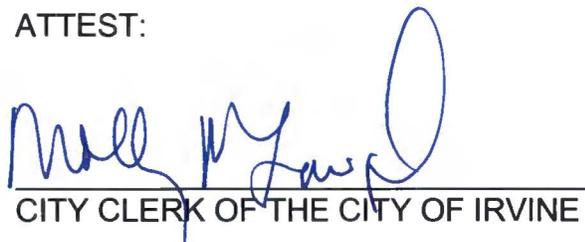
SECTION 9. Nothing in this Ordinance shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under state or local law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 27th day of February 2018.



MAYOR OF THE CITY OF IRVINE

ATTEST:



CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF IRVINE )

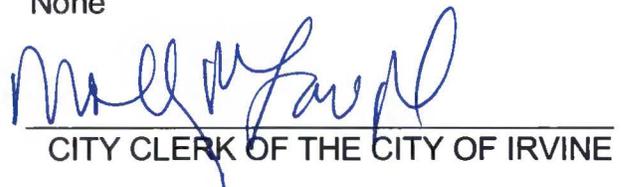
I, MOLLY MCLAUGHLIN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 23rd day of January 2018, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 27th day of February 2018.

AYES: 4 COUNCILMEMBERS: Fox, Lalloway, Shea and Wagner

NOES: 1 COUNCILMEMBERS: Schott

ABSENT: 0 COUNCILMEMBERS: None

ABSTAIN: 0 COUNCILMEMBERS: None



CITY CLERK OF THE CITY OF IRVINE

## **Zoning Code Section 1-2-1**

### **Adding definition for cannabis testing laboratory:**

*Camouflage facility:* A wireless communication facility utilizing effective and appropriate camouflage design techniques such that the antennae and accessory wireless equipment are not visible or not readily visible.

*Cannabis testing laboratory:* a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and, (2) Licensed by the bureau

*Canopy:* A fixed structure of any material and any length, projecting from and connected to a building and/or columns and posts from the ground, or supported by a frame extending from the building and/or posts from the ground.

### **Amending the definition for research and development:**

*Research and development:* Uses engaged in the research, analysis, development and/or testing of a product, not to include cannabis testing laboratories.

- **CHAPTER 3-3. - LAND USE MATRIX**
- **Sec. 3-3-1. - Land use matrix.**

Update the City's land use matrix to allow cannabis testing laboratories in the 5.1 Irvine Business Complex<sup>1</sup>, the 5.4 General Industrial<sup>2</sup>, and in the 5.5 Medical and Science Zones<sup>2</sup>. This use would be prohibited in all other zones.

<sup>1</sup>Cannabis testing laboratories are not allowed in the coastal zone.

<sup>2</sup>Cannabis testing laboratories are not allowed within 600 feet of schools or residences.

## Zoning Code Sections

### Chapter 3-39

#### **CANNABIS RELATED USES, COMMERCIAL CANNABIS ACTIVITIES, DELIVERIES, AND CULTIVATION PROHIBITED**

##### **Sec. 3-39-1 Definitions**

“Cannabis” shall mean 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 marijuana. “Cannabis” also means “marijuana” as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term “Cannabis” shall also have the same meaning as set forth in Business & Professions Code § 26001(f), as may be amended from time to time. “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. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

“Caregiver” or “Primary Caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7, as may be amended from time to time.

“Commercial Cannabis Activity” shall have the same meaning as set forth in Business & Professions Code § 26001(i), as may be amended from time to time. Commercial Cannabis Activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, delivery or sale of cannabis and cannabis products.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available marijuana, with or without cultivation.

“Cultivation” or “Cultivate” shall have the same meaning as set forth in Business & Professions Code § 26001(l), as may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business & Professions Code § 26001(p), as may be amended from time to time.

“Dispensary” shall mean and refer to any premises where Cannabis or Medicinal Cannabis or Cannabis Products are offered, either individually or in any combination, for retail sale or Delivery to consumers, customers, patients, or primary caregivers. For purposes of this Chapter, Dispensary shall also include a Cooperative. Dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Medical Cannabis” or “Cannabis” shall have the same meaning as set forth in Business & Professions Code § 26001(ai), as may be amended from time to time.

“Medicinal and Adult Use Cannabis Regulation and Safety Act” or “MAUCRSA” shall mean and refer to Senate Bill 94, signed into law on June 27, 2017, as the same may be amended from time to time.

“Testing Laboratory” shall have the same meaning as set forth in Business & Professions Code section 26001(as), as may be amended from time to time.

“Qualifying Patient” or “Qualified Patient” shall have the same meaning as set forth in Health and Safety Code section 11362.7 as may be amended from time to time.

### **Sec. 3-39-2 Prohibition.**

Except as set forth in Subsection (F) of this Chapter, all Cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of Cannabis, and all other Commercial Cannabis Activities for which a State license is required under the MAUCRSA are prohibited in all zones throughout the City, regardless of whether the Commercial Cannabis Activity relates to medicinal or adult use marijuana. Accordingly, the City shall not issue any permit, or process any license or other entitlement for any Cannabis related use or any other activity for which a State license is required under the MAUCRSA.

- A. Adult Use Cannabis Related Uses. Except as set forth in subsection (F) of this Chapter, all adult use Cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of Cannabis, are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether the Cannabis related use related to medicinal or adult use marijuana. No person shall establish, operate, conduct, permit or allow any Cannabis related use anywhere within the City.
- B. Medical Cannabis Uses. Except as set forth in subsection (F) of this Chapter, all Medical Cannabis related uses, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of Cannabis, are expressly

prohibited in all zones and all specific plan areas in the City, regardless of whether such uses qualify as Commercial Cannabis Activities under the MAUCRSA. No person shall establish, operate, conduct, permit or allow any Medical Cannabis related land use anywhere within the City.

- C. Commercial Cannabis Activities. Except as set forth in subsection (F) of this Chapter, all Commercial Cannabis Activities, including but not limited to the manufacture, sale, delivery, distribution, processing, and cultivation of Cannabis, are expressly prohibited in all zones and all specific plan areas in the City, regardless of whether such uses relate to medicinal or adult use marijuana. No person shall establish, operate, conduct, permit or allow a Commercial Cannabis Activity anywhere within the City.
- D. Cannabis Deliveries. Except as set forth in subsection (F) of this Chapter, all Deliveries of Cannabis and Medical Cannabis are expressly prohibited in the City. No person shall conduct any Deliveries of Cannabis or Medical Cannabis that either originate or terminate at any location within the City.
- E. Cannabis Cultivation. The commercial Cultivation of Cannabis is expressly prohibited in all zones and all specific plan areas in the City, regardless of whether the cultivation is related to medicinal or adult use marijuana.
- F. Cannabis Testing Laboratories. Cannabis Testing Laboratories shall only be permitted in the following zoning districts in the City: 5.1 IBC Multi-Use, 5.5 Medical and Science, and 5.4 General Industrial and upon the issuance of both (1) a valid permit issued by the City pursuant Title 4 - Public Safety of the City's Municipal Code and (2) a valid state license. Cannabis Testing Laboratories shall not be permitted in any other zoning district in the City.

### **Sec. 3-39-3 Public Nuisance**

Any use or condition cause, or permitted to exist, in violation of any provision of this Chapter 3-39 shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure Section 731 or any other remedy available at law.

### **Sec. 3-39-4 Civil Penalties**

In addition to any other enforcement permitted by the City's Zoning and/or Municipal Codes, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this Chapter. In any civil action that is brought pursuant to this Chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

**Sec. 3-37-29. - 5.1 IBC Multi-Use.**

A. *Intent.* The Multi-Use land use district is intended as an area in which a wide variety of uses are allowed. Specific institutional uses, particularly those proposed to serve the needs of the residential and employee populations of this district, such as schools, parks, libraries and theaters, are especially encouraged in this area. Special provisions apply to several of the conditional commercial uses in this area which generate high levels of traffic.

B. *Permitted uses.*

GLU <sup>1</sup> Category	Use
35	Accessory use
36	Agriculture (interim use)
29	Cannabis testing laboratory (not allowed in the coastal zone or within the IBC Residential Overlay area)
35 <sup>T</sup>	Commercial recreation (under 1,500 square feet)

**Sec. 3-37-33. - 5.4 General Industrial.**

**A. Intent. This category reserves an area for uses such as manufacturing, warehousing and service industries.**

(5.4)	Irvine Spectrum 2 (Planning Area 35)
	Irvine Spectrum 8 (Planning Area 40)
	Oak Creek (Planning Area 12)
(5.4A)	Irvine Spectrum 5 (Planning Area 34)
(5.4B)	Oak Creek (Planning Area 12)
	Irvine Spectrum 3 (Planning Area 32)
	Orange County Great Park (Planning Area 30)

**B. Permitted uses. <sup>1</sup>**

1. Accessory use.
2. Agriculture (interim use).
3. Alternative health care provider (permitted only in 5.4B).
4. Cannabis testing laboratory (not allowed within 600 feet of schools or residences)
5. Caretaker's quarters.
6. Domestic animal care facility. <sup>8</sup>
7. Emergency shelter.
8. Industry, service.
9. Manufactured structure permit (up to two years).
10. Manufacturing, light.
11. Miniwarehouse.
12. Office, administrative, business, professional (permitted only in 5.4B).
13. Office, design professionals (permitted only in Planning Areas 12, 13, 32, 34, 35). <sup>2</sup>

**Sec. 3-37-34. - 5.5 Medical and Science.**

- A. *Intent.* This category allows the development of a biomedical/high technology complex combining health care facilities and related businesses, medical research and education, general research and development, and light manufacturing and assembly in one master planned area.

(5.5)	Irvine Spectrum 4 (Planning Area 13)
(5.5A)	Irvine Spectrum 6 (Planning Area 31)
(5.5B)	Jamboree Business Center, East (Planning Area 10)
(5.5C)	Planning Area 17 (east of Laguna Canyon Road)
(5.5D)	Irvine Spectrum 8 (Planning Area 40)
(5.5E)	Reserved
(5.5F)	Planning Area 6 (Portola Springs)
(5.5G)	Planning Area 17 (west of Laguna Canyon Road)
(5.5H)	Planning Area 12 (Oakcreek)

- B. *Permitted uses.* <sup>1</sup>

1. Accessory use.
2. Agriculture (interim use).
3. Alternative health care provider.
4. Cannabis testing laboratory(not allowed within 600 feet of schools or residences)
5. Caretaker's quarters.
6. Emergency shelters.
7. Financial institution (except drive-thru).