

ORDINANCE NO. 19-XX

**AN ORDINANCE AMENDING CONCORD MUNICIPAL CODE
CHAPTER 5.80 (CANNABIS) TO ADD ADULT-USE CITY CANNABIS
LICENSES FOR MANUFACTURING AND DISTRIBUTION; TO
INCREASE THE MAXIMUM NUMBER OF CITY CANNABIS LICENSES
FOR MANUFACTURING, DISTRIBUTION AND TESTING
LABORATORIES; TO ALLOW CITY CANNABIS LICENSES FOR
MEDICINAL AND ADULT-USE RETAIL (STOREFRONT AND NON-
STOREFRONT); AND TO ALLOW CITY CANNABIS LICENSES FOR
MICROBUSINESSES**

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

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act (CUA), codified as California Health and Safety Code Section 11362.5. The CUA creates a limited exception from criminal liability for serious ill persons who are in need of medical marijuana for specified medical reasons and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, in 2004, the State legislature adopted the Medical Marijuana Program Act (MMPA), codified as California Health and Safety Code Section 11362.7 et seq., to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA. The CUA expressly anticipates the enactment of additional local legislation and provides that “(n)othing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.” (Health and Safety Code Section 11362.5); and

WHEREAS, on September 27, 2005, the City Council adopted Ordinance 05-9, amending the Concord Municipal Code by prohibiting the establishment of medical marijuana dispensaries, fixed or mobile, due to the inconsistencies between Federal and State law and to protect the public health, safety, and general welfare; and

WHEREAS, on April 9, 2013, the City Council adopted Ordinance 13-1, amending the Concord Development Code, prohibiting outdoor cultivation of medical marijuana to provide for the public

1 health, safety, and welfare, to limit odor caused by marijuana from impacting adjacent properties, and
2 to prevent the attractive nuisance created by marijuana cultivation, which creates the risk of burglary,
3 trespass, robbery, and armed robbery, posing the threat of serious injury or death, and requiring the
4 expenditure of scarce police and public safety resources; and

5 **WHEREAS**, on October 9, 2015, Governor Brown approved a series of bills commonly referred
6 to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective January 1, 2016, which
7 created a state licensing and regulatory framework for the cultivation, manufacture, transportation,
8 storage, distribution, and sale of medical cannabis; and

9 **WHEREAS**, on November 8, 2016, the Control, Regulate, & Tax Adult Use of Marijuana Act
10 (AUMA) was approved by California voters through the passing of Proposition 64. Effective November
11 9, 2016, the AUMA legalizes for persons 21 years or older to: (1) smoke or ingest marijuana or
12 marijuana products, (2) possess, process, transport, purchase, obtain, give away without compensation
13 to persons 21 years or older 28.5 grams of marijuana or 8 grams of concentrated marijuana, and (3)
14 possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants per legal dwelling unit
15 for personal use. Additionally, the AUMA created a state regulatory and licensing system governing the
16 commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of
17 nonmedical marijuana products, of which temporary regulations established by the State became
18 effective as of January 2, 2018; and

19 **WHEREAS**, on January 10, 2017, the City Council adopted Ordinance 16-9, which (among
20 other things) prohibited outdoor cultivation of medical and nonmedical marijuana. The City Council
21 also directed the Council Committee on Policy Development and Internal Operations (“PD&IO”) to
22 comprehensively study potential regulations for medical and nonmedical marijuana uses; and

23 **WHEREAS**, on May 24, 2017, the PD&IO Committee held a public meeting on marijuana
24 regulations and recommended that the City Council consider an ordinance removing any prohibitions
25 or bans on delivery of medical marijuana from licensed dispensaries, while keeping the existing
26 restrictions and bans on marijuana cultivation and dispensaries (fixed or mobile) in place; and

27 **WHEREAS**, in June 2017, the California Legislature passed Senate Bill 94, which effectively
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1 repealed MCRSA and incorporated certain provisions of MCRSA in the licensing provisions of the
2 AUMA, and replaced it with the Medical and Adult Use Cannabis Regulation and Safety Act
3 (“MAUCRSA”); and

4 **WHEREAS**, on July 25, 2017, the City Council adopted Ordinance No. 17-10, which amended
5 the Concord Municipal Code to allow delivery of medical marijuana from licensed dispensaries to
6 qualified patients; and

7 **WHEREAS**, on November 14, 2017, the City Council adopted Ordinance No. 17-13, amending
8 the Municipal Code and Development Code to ban all cannabis uses, except for personal indoor
9 cultivation and delivery of medicinal cannabis from licensed dispensaries located outside of Concord to
10 qualified patients. At that time, the City Council also instructed staff to bring back for consideration
11 regulations for certain cannabis uses at a later time; and

12 **WHEREAS**, on June 12, 2018, the City Council adopted Ordinance No. 18-3 to amend the
13 Municipal Code and Development Code to establish a Commercial Cannabis Overlay District,
14 associated development standards, and a licensing framework for medicinal-only cannabis
15 manufacturing and distribution, as well as adult-use and medicinal testing laboratories; and

16 **WHEREAS**, on April 2, 2019, the City Council and Planning Commission conducted a Joint
17 Study Session and directed staff to pursue revisions to the existing cannabis regulations to potentially
18 allow additional city cannabis licenses including adult-use and medicinal non-storefront manufacturing
19 and distribution; and consideration of allowing city cannabis licenses for adult-use and medicinal
20 storefront retail and microbusinesses; and provided direction on a competitive selection process for
21 cannabis businesses, and potential revenue agreements; and

22 **WHEREAS**, on August 13, 2019, the City Council provided direction to staff to draft
23 regulations to allow adult-use, in addition to medicinal-only, cannabis manufacturing and distribution
24 city cannabis licenses; and to increase the number of city cannabis licenses for cannabis manufacturing,
25 distribution, and testing laboratories; and

26 **WHEREAS**, the adoption of this Ordinance and attached text amendments (“Amendment”
27 attached hereto as Exhibit A) to the Concord Municipal Code is necessary to add adult-use city cannabis
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1 licenses in addition to medicinal city cannabis licenses, to increase the maximum number of city
2 cannabis licenses for manufacturing, distribution, and testing laboratories; to allow city cannabis
3 licenses for medicinal and adult-use retail (storefront and non-storefront); and to allow city cannabis
4 license for microbusinesses; and

5 **WHEREAS**, pursuant to the California Environmental Quality Act of 1970, Public Resources
6 Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of
7 the California Code of Regulations (collectively, “CEQA”), the Amendment to the Municipal Code
8 does not constitute a “project” within the meaning of Public Resources Code Section 21065 and
9 CEQA Guidelines Sections 15060(c)(2), or 15378 because there is no potential that the activity will
10 result in a direct or reasonably foreseeable indirect or direct physical change in the environment.
11 Moreover, even if the Amendment comprised a project for CEQA analysis, it falls within the
12 “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding
13 projects where “it can be seen with certainty that there is no possibility that the activity in question
14 may have a significant effect on the environment.” In addition, Business and Professions Code
15 Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance, rule, or
16 regulation that requires discretionary review and approval of permits, licenses or other authorizations
17 to engage in commercial cannabis activity as long as each discretionary approval involves applicable
18 CEQA review; and

19 **WHEREAS**, the City Council, after giving all public notices required by state law and the
20 Concord Municipal Code, held a duly noticed public hearing on November 5, 2019, on the proposed
21 Amendment, considered testimony and information received at the public hearing and the oral and
22 written reports from City staff dated November 5, 2019, as well as other documents contained in the
23 record of proceedings relating to the proposed project, which are maintained at the offices of the City
24 of Concord City Clerk’s Office, 1950 Parkside Drive, Concord, CA, and declared their intent to approve
25 and adopt the Amendment.

26 **THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:**

27 **Section 1.** All of the facts set forth in the Recitals are true and correct and are hereby
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1 incorporated and adopted as findings of the City Council as if fully set forth herein.

2 **Section 2.** Pursuant to CEQA, the Amendment to the Municipal Code does not constitute a
3 “project” within the meaning of Public Resources Code Section 21065 and CEQA Guidelines
4 Sections 15060(c)(2), or 15378 because there is no potential that the activity will result in a direct or
5 reasonably foreseeable indirect or direct physical change in the environment. Moreover, even if the
6 Amendment comprised a project for CEQA analysis, it falls within the “common sense” CEQA
7 exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be
8 seen with certainty that there is no possibility that the activity in question may have a significant effect
9 on the environment.” In addition, Business and Professions Code Section 26055(h) provides that
10 CEQA does not apply to the adoption of an ordinance, rule, or regulation that requires discretionary
11 review and approval of permits, licenses or other authorizations to engage in commercial cannabis
12 activity as long as each discretionary approval involves applicable CEQA review. This determination
13 reflects the City’s independent judgment and analysis.

14 **Section 3.** The Amendment is consistent with the General Plan Policy E-2.1.1, which states
15 “establish land use priorities that foster entrepreneurship, growth, and innovative business
16 development” and Policy E-2.1.5, to “attract businesses in growth industries that require highly skilled
17 labor.” The Amendment is also consistent with Policy LU-6.1.2, which states “provide sites for
18 employment-generating businesses...and light industrial uses wishing to locate to Concord.”

19 **Section 4.** The Amendment would not be detrimental to the public interest, health, safety,
20 convenience, or welfare of the City, as the proposed Amendment maintains the four part regulatory
21 framework to evaluate certain cannabis businesses and commercial activities and includes conditions
22 of licenses to lessen potential impacts that may result from allowing adult-use cannabis and additional
23 cannabis licenses.

24 **Section 5.** The City Council has reviewed, considered, and evaluated all of the Amendment
25 Information prior to acting upon Amendment.

26 **Section 6.** The documents and other materials that constitute the record of proceedings upon
27 which the City Council has based its recommendation are located in and may be obtained from the
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1 City of Concord Clerk’s Office, 1950 Parkside Drive, Concord, CA 94519.

2 **Section 7.** The Concord Municipal Code is hereby amended as set forth in Exhibit A, attached
3 hereto and made a part hereof.

4 **Section 8.** This ordinance shall become effective thirty (30) days following passage and
5 adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a
6 certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least
7 five (5) days prior to its adoption and within fifteen (15) days after its adoption, including the vote of
8 the Councilmembers. Additionally, a summary prepared by the City Attorney’s Office shall be
9 published once at least five (5) days prior to the date of adoption of this Ordinance and once within
10 fifteen (15) days after its passage and adoption, including the vote of the Councilmembers, in the East
11 Bay Times, a newspaper of general circulation in the City of Concord.

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14 _____
Carlyn S. Obringer
Mayor

15 ATTEST:

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17 By: _____
18 Joelle Fockler, MMC
City Clerk
19 (Seal)

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1 Ordinance No. 19-XX was duly and regularly introduced at a regular meeting of the City
2 Council of the City of Concord held on November 5, 2019, and was thereafter duly and regularly
3 passed and adopted at a regular meeting of the City Council held on December 3, 2019, by the
4 following vote:

5 **AYES:** Councilmembers -

6 **NOES:** Councilmembers -

7 **ABSTAIN:** Councilmembers -

8 **ABSENT:** Councilmembers -

9 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and
10 regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

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12 By: _____
13 Joelle Fockler, MMC
14 City Clerk

15 Exhibit A: Amendment
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