



PLANNING COMMISSION AGENDA

Tuesday, October 24, 2017

Study Session 6:00 p.m.

Planning Commission Hearings 7:00 p.m.

James McGrade, Chair

Art Willis, Vice Chair

Pat Fox, Commission Member

Melanie Schlotterbeck, Commission Member

Jim Grosse, Commission Member

This agenda contains a brief general description of each item the Commission will consider. All Planning Commission decisions may be appealed to the City Council within ten (10) calendar days of the meetings. Please contact the City Clerk at (714) 990-7756 for further information about filing an appeal or obtaining an appeal application.

The Planning Department has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the Planning Department's Office at (714) 990-7674 or view the Agenda and related materials on the City's website at www.cityofbrea.net. Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection in the Planning Department's Office at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

Procedures for Addressing the Commission

The Commission encourages free expression of all points of view. For record keeping purposes, if you wish to make a statement regarding any item on the agenda, please complete the form located on the podium and deposit it with the secretary. **To allow all persons the opportunity to speak, please keep your remarks limited to five (5) minutes.** If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Commission rules prohibit clapping, booing or shouts of approval or disagreement from the audience. **PLEASE SILENCE ALL PAGERS, CELL PHONES AND OTHER ELECTRONIC EQUIPMENT WHILE COMMISSION IS IN SESSION**

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department's Office at (714) 990-7674. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

ALL PLANNING COMMISSION DECISIONS MAY BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS OF THE MEETING. PLEASE CONTACT THE CITY CLERK AT (714) 990-7756 FOR FURTHER INFORMATION ABOUT FILING AN APPEAL OR OBTAINING AN APPEAL APPLICATION.

STUDY SESSION
6:00 p.m. - Executive Conference Room, Level 3

CALL TO ORDER / ROLL CALL

1. **Matters from the Audience**
 2. Agenda Items / Clarify Regular Meeting Topics
 3. **Upcoming Agenda Items**
 4. **Informational / Project Updates**
-

PLANNING COMMISSION
PUBLIC HEARINGS
7:00 p.m. - Council Chambers, Plaza Level

5. **CALL TO ORDER / ROLL CALL - COMMISSION**
6. **INVOCATION** - Pastor Kirk Randolph of Southlands Church
7. **PLEDGE OF ALLEGIANCE**
8. **MATTERS FROM THE AUDIENCE**

APPROVAL OF MINUTES

9. Approval of Planning Commission Meeting Minutes of August 22, 2017.

PUBLIC HEARINGS

10. Consideration of Zoning Ordinance Amendment No. 17-01 to amend Chapter 20.70 of the Brea Zoning Code to prohibit all medical and non-medical commercial cannabis uses in the City and regulate indoor cannabis cultivation, consistent with state law.

ADMINISTRATIVE ITEMS

11. **COMMITTEE REPORTS**
12. **INFORMATIONAL / PROJECT UPDATES**
13. **ADJOURNMENT**

City of Brea

PLANNING COMMISSION COMMUNICATION

TO: Honorable Chair and Planning Commission

DATE: 10/24/2017

SUBJECT: Approval of Planning Commission Meeting Minutes of August 22, 2017.

RESPECTFULLY SUBMITTED

Jennifer A. Lilley, AICP, City Planner

Prepared by: Carrie Hosozawa, Planning Admin

Attachments

Minutes of 8/22/17

DRAFT

PLANNING COMMISSION MEETING MINUTES STUDY SESSION August 22, 2017

Present: Commissioner Jim Grosse; Chair James McGrade; Commissioner Melanie Schlotterbeck; Vice Chair Art Willis

Absent: Commissioner Pat Fox

STUDY SESSION 6:00 p.m. - Executive Conference Room, Level 3

CALL TO ORDER / ROLL CALL

Chair McGrade called the meeting to order at 6:05pm.

Roll call

1. Matters from the Audience

Opened/Closed.

None.

2. Agenda Items / Clarify Regular Meeting Topics

A CUP for a Memory Care Facility - 149 W Lambert

City Planner Lilley gave an overview of the project. Staff was asked to ensure detail in the report regarding: zoning of property; number of rooms/beds; parking and valet service; number and types of staff; circulation in and out of site; parking and valet service; how much of the property is covered by the footprint of the building; if gate on west side is to remain closed; and if residents have their own vehicles.

3. Informational / Project Updates

City Planner Lilley updated the Commission on the the Brea Core Planning effort as far as dates of upcoming workshops and phases.

Chair McGrade asked about upcoming projects for the rest of the year.

City Planner Lilley stated that CVS and Improv signage would likely come back for administrative review. The ZOA related Marijuana will be reviewed. Commissioner Grosses asked about parking for a proposed hotel. City Planner Lilley responded the applicant would need to propose a parking plan and at this point, there is no application and no specifics.

NO PUBLIC HEARINGS

Respectfully submitted,

The foregoing minutes are hereby
approved this ____ day of _____

Jennifer A. Lilley, City Planner

James McGrade, Chair

City of Brea

PLANNING COMMISSION COMMUNICATION

TO: Honorable Chair and Planning Commission

FROM: Jennifer A. Lilley, AICP, City Planner

DATE: 10/24/2017

SUBJECT: Consideration of Zoning Ordinance Amendment No. 17-01 to amend Chapter 20.70 of the Brea Zoning Code to prohibit all medical and non-medical commercial cannabis uses in the City and regulate indoor cannabis cultivation, consistent with state law.

REQUEST

A proposal to amend Section 20.70 of the Brea Zoning Code to prohibit all medical and non-medical commercial cannabis uses in the City and regulate indoor cannabis cultivation, consistent with state law.

Applicant: City of Brea
1 Civic Center Circle
Brea, CA 92821

RECOMMENDATION

Staff recommends the Planning Commission:

- Adopt Resolution recommending approval of Zoning Ordinance Amendment No. 17-01.
- Recommend the City Council approve the Draft Ordinance

BACKGROUND/DISCUSSION

Since 2015, California law has been evolving with new legislation regarding marijuana/cannabis land use and activities. To respond to changes made to state law, the City of Brea adopted and modified Chapter 20.70, to maintain local land use control and prohibit all commercial cannabis activities in the City. In 2016, California voters passed Proposition 64, legalizing limited personal and recreational use of cannabis. Included in the provisions of the new law is the ability for local jurisdictions to regulate commercial cannabis land uses and activities.

In December 2016, the City adopted interim Ordinance 1190 to provide for the review of the new law, consideration of potential impacts and land use effects and crafting of a permanent Ordinance to address land use issues, define terms and provide clarification for personal and commercial activities as they relate to the City of Brea. Although the City is in the process of adopting its permanent Ordinance, there is a gap in the timing of the adoption period and the January 1, 2018 state law timing. To ensure the City's current prohibition on commercial cannabis is protected the City Council adopted an extension to Interim Ordinance 1190 on October 17, 2017. If approved, this action amending Chapter 20.70 will be considered by the City Council in November, 2017. Figure 1, provides an overview of the history of actions related to marijuana land uses and activities.

Figure 1 – History of Actions

Date	Ordinance Number	Purpose
December 15, 2015	Ordinance No. 1181	An interim Ordinance prohibiting commercial marijuana activity, including deliveries and prohibiting cultivation. Expired after 45 days.
January 19, 2016	Ordinance No. 1182	An interim Ordinance extending Ordinance No. 1181. Expired after 10 months and 15 days.
March 15, 2016	Ordinance No. 1183	A permanent Ordinance prohibiting all commercial medical marijuana activity within the City, including deliveries, and prohibiting cultivation, including cultivation for qualified patient or primary caregiver.
November 1, 2016	Ordinance No. 1189	An interim Ordinance prohibiting all commercial non-medical marijuana activity in the City, prohibiting outdoor cultivation on private residences. Expired after 45 days
December 6, 2016	Ordinance No. 1190	An interim Ordinance extended Ordinance No. 1189. Expired after 10 months and 15 days.
October 17, 2017	Ordinance No. 1197	An interim Ordinance extending Ordinance No. 1190 for one additional year or until repealed. To ensure there is no gap between the expiration of Ordinance 1190 and the effective date of ZOA 17-01.

On January 1, 2018, commercial cannabis activities will begin to be licensed by the State pursuant to the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) (Senate Bill No. 94 enacted on June 27, 2017). The City of Brea wants to maintain current restrictions prohibiting commercial cannabis land uses and related activities within the City to the extent permitted by State law. Section 20.70 of the Zoning Code was adopted prior to the most recent changes to state law and does not provide the level of specificity to address cultivation, sales, delivery and similar commercial land uses which were not previously allowed by the State. The proposed Zoning Ordinance Amendment includes:

- Updated language to reflect the prohibition of commercial cannabis uses as opposed to the prohibition of commercial “marijuana” uses; The change from marijuana to cannabis clarifies the prohibitions includes all strains of the marijuana plant. This language ensures there is no confusion or misunderstanding related to cannabis or cannabis products;
- Parameters for indoor cultivation taking into account the maximum number of plants allowed within a private residence and the conditions in which the plants can be kept; and
- New definitions and standards consistent with state law.

Additionally, state law allows for limited, personal use and private cultivation of cannabis for personal use. The City Council will be considering the adoption of Section 8.48 of the Municipal Code to address private use and activities to ensure clarity for our residents and define terms and activities allowed and prohibited in the City of Brea. Although this section of the Municipal Code is not subject to the review of the Planning Commission we have included it with this report to provide information on

how the City is addressing these activities.

ENVIRONMENTAL ASSESSMENT

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061, Class 3 (b) Article 5 because it can be seen with certainty that there is no possibility that the project to prohibit commercial cannabis activity will have a significant negative impact on the environment. The project will not result in permanent alteration of property or the construction of any new or expanded structures. The project by itself does not result in any physical changes in the environment. The project is also eligible for a Class 5 categorical CEQA exemption pursuant to Section 15305 Article 19 of Title 14 (minor alterations in land use). Since the project is prohibiting all commercial cannabis uses, it will not result in changes in land use or density and will not have a significant environmental impact.

RESPECTFULLY SUBMITTED

Jennifer A. Lilley, AICP, City Planner

Prepared by: Aileen Camargo, Planning Technician

ALTERNATE PLANNING COMMISSION ACTIONS:

Approve with alternate conditions

Continue

Deny

Attachments

Legal Notice

Draft Resolution

Draft Ordinance

CITY OF BREA PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN by the City of Brea that a public hearing will be held by the Planning Commission on **Tuesday, October 24, 2017, at 7:00 p.m.**, or as soon thereafter as the matter can be heard, in the Council Chambers of the City of Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California 92821, in accordance with State Law and the Brea City Code, for the purpose of considering the following application:

ZONING ORDINANCE AMENDMENT NO. ZOA 17-01 – a proposal to amend Section 20.70 of the Brea Zoning Ordinance to prohibit all commercial medical and non-medical cannabis activity in the City, prohibiting outdoor cannabis cultivation, and regulating indoor cannabis cultivation consistent with State law.

The City of Brea has determined that the proposed project is 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 will have a significant effect on the environment. The project will not result in a permanent alteration of property or the construction of any new or expanded structures. Therefore, the project by itself does not result in any physical changes in the environment. 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, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore also exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations.

Applicant: City of Brea
 1 Civic Center Circle
 Brea, CA 92821

ALL INTERESTED PERSONS are invited to attend said hearing and express opinions on the matters outlined above. FURTHER INFORMATION may be obtained at the COMMUNITY DEVELOPMENT DEPARTMENT, Planning Division, or by calling (714) 990-7674.

IF YOU CHALLENGE THIS PROJECT AND THE RELATED ENVIRONMENTAL DETERMINATIONS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE, DELIVERED TO THE PLANNING COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

Jennifer A. Lilley, AICP
City Planner

Date: September 21, 2017

RESOLUTION NO. PC 17-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF ZONING ORDINANCE AMENDMENT NO. 17-01 AMENDING SECTION 20.70 OF THE BREA ZONING CODE, PROHIBITING ALL MEDICAL AND NON-MEDICAL COMMERCIAL CANNABIS ACTIVITY, PROHIBITING OUTDOOR CULTIVATION, AND REGULATING INDOOR CANNABIS CULTIVATION, CONSISTENT WITH STATE LAW

A. 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 State licensing for commercial medical cannabis uses, while protecting local control by requiring that all such businesses 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 to the California Business and Professions Code, sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055 provides 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.

(iii) On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory provision 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 of 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 marijuana businesses beginning January 1, 2018. The MAUCRSA also requires that a city provide a copy of its ordinance regarding commercial cannabis activity to the Bureau of Cannabis Control.

(iv) On October 24, 2017, the Planning Commission of the City of Brea conducted a duly noticed public hearing concerning the adoption of Zoning Ordinance Amendment No. ZOA 17-01.

(v) The project proponent is the City of Brea;

- (vi) The proposed ordinance would apply to all properties within the City of Brea;
- (vii) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION:

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Brea as follows:

1. In all respects as set forth in Recitals, Part A, of this Resolution.
2. The proposed Zoning Ordinance Amendment is consistent with the General Plan. Prohibiting all medical and non-medical commercial cannabis activity, including delivery, outdoor cultivation and regulating indoor cultivation on a private residence, fulfills General Plan Goal PS-2 in that it improves community safety and reduces opportunities for criminal activity.
3. The proposed Amendment will not be materially injurious or detrimental to real property or improvements nor will it have a significant adverse impact upon the environment.
4. The purpose and intent of ZOA No. 17-01 is to prohibit all commercial cannabis uses, medical and non-medical cannabis cultivation activities in all zones.
5. The Planning Commission has reviewed staff's determination of exemption and finds that it can be seen with certainty that there is no possibility that adoption of Zoning Ordinance Amendment No. ZOA 17-01 may have a significant effect on the environment because it will impose greater limitations on marijuana-related uses allowed in the City, and will thereby serve to prevent potentially significant adverse environmental impacts.

Based on its own independent judgment, the Planning Commission concurs in staff's determination that the Ordinance is not subject to California Environmental Quality Act review, pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. The Planning Commission further finds that adoption of proposed Zoning Ordinance Amendment No. ZOA 17-01 is exempt from further CEQA review pursuant to CEQA Guidelines section 15305, minor alterations in land use.

6. This Commission hereby recommends that the City Council of the City of Brea adopt Zoning Ordinance Amendment No. ZOA 17-01 as set forth in the Ordinance attached hereto as Exhibit "A", and incorporated by reference herein.
7. The secretary of this Commission shall certify to the adoption of this Resolution; and, (b) forthwith transmit a copy of said Resolution to the City Council.

ADOPTED AND APPROVED this 24th day of October, 2017.

Chairman, Planning Commission

I, Jennifer A. Lilley, Secretary of the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Brea held on the 24th day of October, 2017, and was

finally passed at a regular meeting of the Planning Commission of the City of Brea, held on the 24th day of October, 2017, by the following votes:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: _____
Secretary, Planning Commission

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BREA APPROVING ZONING ORDINANCE AMENDMENT
NO. 17-01 AND RELATED MUNICIPAL CODE
AMENDMENTS, PROHIBITING ALL MEDICAL AND NON-
MEDICAL COMMERCIAL CANNABIS ACTIVITY,
PROHIBITING OUTDOOR CULTIVATION, AND
REGULATING INDOOR CANNABIS CULTIVATION,
CONSISTENT WITH STATE LAW**

A. Recitals and Findings. The City Council of the City of Brea makes the following findings in support of Zoning Ordinance Amendment (“ZOA”) No. 17-01 and related Municipal Code amendments herein:

(i) The City of Brea, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

(ii) The City Council has heretofore adopted Interim Ordinance Nos. 1189 and 1190, thereby prohibiting medical and non-medical commercial cannabis activities in all zones of the City, to the maximum extent permitted by law.

(iii) 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 State licensing for commercial medical cannabis uses, while protecting local control by requiring that all such businesses 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.

(iv) On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, sections 26000, *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(e) provides 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.

(v) 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 provision 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 of 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 marijuana businesses beginning January 1, 2018. The MAUCRSA also requires that a city provide a copy of its ordinance regarding commercial cannabis activity to the Bureau of Cannabis Control.

(vi) On October 24, 2017, the Planning Commission of the City of Brea conducted and concluded a properly noticed public hearing regarding ZOA No. 17-01. At the conclusion of the Planning Commission hearing, the Planning Commission adopted Resolution No. _____ recommending that the City Council adopt ZOA No. 17-01.

(vii) On _____, 2017, the City Council of the City of Brea conducted and concluded a properly noticed public hearing regarding ZOA No. 17-01, as well as related Municipal Code amendments.

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

B. Ordinance.

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

SECTION 1. The facts set forth in the Recitals, Part A, above, are true and correct.

SECTION 2. Environmental Determination. Zoning Ordinance Amendment No. 17-01 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 will have a significant effect on the environment. The project will not result in a permanent alteration of property or the construction of any new or expanded structures. Therefore, the project by itself does not result in any physical changes in the environment. 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, it will not result in changes in land use or density and will not have a significant environmental impact. The project is therefore also exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations. Based thereon, the City Council directs that a Notice of Exemption be filed with the County Clerk in accordance with CEQA Guidelines.

SECTION 3. The proposed amendments to the City’s Zoning Ordinance set forth herein are consistent with and conform to the General Plan of the City.

SECTION 4. A new Chapter 8.48 is hereby added to Title 8 (Health, Safety, and Welfare) of the Brea Municipal Code to read as follows:

“CHAPTER 8.48 CANNABIS PROHIBITIONS AND REGULATIONS

Sections:

<u>8.48.010:</u>	Definitions.
<u>8.48.020:</u>	Prohibited activities.
<u>8.48.030:</u>	Exceptions.
<u>8.48.040:</u>	Violation and penalty.

§ 8.48.010 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the meanings set forth in the MAUCRSA and otherwise as set forth below:

“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.

“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.

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale 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 the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient 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. Commercial cannabis activity also does not include 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, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

“Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

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

“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. .

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

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

“Person” means any natural person, firm, corporation, association, club, society, partnership, joint venture, limited liability company, sole proprietorship, collective, cooperative, coop, non-profit, estate, trust, receiver, syndicate, or any other organization, group or entity or combination of organizations or entities of any kind whatsoever, however formed, as well as trustees, heirs, executors, administrators, and/or assigns, and shall also include any owner, operator, manager, proprietor, employee, agent, officer, volunteer, salesperson, trustees, heirs, executors, administrators and assigns. The term “person” shall also include all persons who have an ownership or leasehold interest in any real property, premises and/or structures in which commercial cannabis activity is occurring.

“Qualified patient” means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, as the same may be amended from time to time.

“Primary caregiver” shall have the same meaning as is defined in California Health and Safety Code section 11362.7(d), as the same may be amended from time to time.

§ 8.48.020 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. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. Subsection A above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, or successor provisions thereto, as the same may be amended from time to time.

D. Subject to the exceptions set forth in Section 8.48.030 below, and to the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products, to or from any location in the city are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products, which delivery either originates or terminates within the city.

§ 8.48.030 EXCEPTIONS.

A. Nothing in this chapter shall 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 and is otherwise in compliance with State law.

B. 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.

C. 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.

§ 8.48.040 VIOLATION AND PENALTY.

In addition to any other enforcement permitted by this Chapter 8.48 of the Brea 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 1.04 of the Brea Municipal Code, no provision of this chapter authorizes 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 1.04 of the Brea Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”

SECTION 5. Chapter 20.70 (Commercial Medical Marijuana) of Title 20 (Zoning Code) of the Brea Municipal Code is hereby repealed, provided such repeal shall not excuse or otherwise affect any prosecution occurring prior to the effective date of this Ordinance.

SECTION 6. A new Chapter 20.70 is hereby added to Title 20 (Zoning Code) of the Brea Municipal Code, to read as follows:

“CHAPTER 20.70

COMMERCIAL CANNABIS USES AND CULTIVATION

Sections:

<u>20.70.010</u>	Definitions.
<u>20.70.020:</u>	Prohibited uses.
<u>20.70.030:</u>	Indoor cannabis cultivation.
<u>20.70.040:</u>	Exceptions.
<u>20.70.050:</u>	Violation and penalty.

§ 20.70.010 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the meanings set forth in the MAUCRSA and as set forth below:

“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.

“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.

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale 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 the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient 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. Commercial cannabis activity also does not include 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, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765.

“Commercial cannabis use” means the use of any property for commercial cannabis activity.

“Compassionate Use Act” means the Compassionate Use Act of 1996 (Proposition 215), codified as California Health and Safety Code Section 11362.5.

“Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

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

“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 the retailer.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“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.

“Indoor” means within a fully enclosed and secure structure.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

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

“Medical Marijuana Program” means California Health and Safety Code Sections 11362.7 through 11362.83, as such statutes may be amended from time to time.

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

“Person” means any natural person, firm, corporation, association, club, society, partnership, joint venture, limited liability company, sole proprietorship, collective, cooperative, coop, non-profit, estate, trust, receiver, syndicate, or any other organization, group or entity or combination of organizations or entities of any kind whatsoever, however formed, as well as trustees, heirs, executors, administrators, and/or assigns, and shall also include any owner, operator, manager, proprietor, employee, agent, officer, volunteer, salesperson, trustees, heirs, executors, administrators and assigns. The term “person” shall also include all persons who have an ownership or leasehold interest in any real property, premises and/or structures in which commercial cannabis activity is occurring.

“Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person pursuant to the requirements of the Compassionate Use Act and the Medical Marijuana Program.

“Private residence” means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

“Qualified patient” means a person who is entitled to the protections of California Health and Safety Code section 11362.5, as the same may be amended from time to time, but who does not have an identification card.

“Primary caregiver” shall have the same meaning as is defined in California Health and Safety Code section 11362.7(d), as the same may be amended from time to time.

§ 20.70.020 PROHIBITED USES.

A. Commercial cannabis uses are expressly prohibited in all zones and overlay districts in the city. No person shall establish, operate, maintain, conduct or allow commercial cannabis uses anywhere within the city. The city shall not approve any application for a building permit, conditional use permit, variance, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any commercial cannabis use.

B. Outdoor cannabis cultivation is expressly prohibited everywhere 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.

C. Indoor cannabis cultivation, including cultivation by a qualified patient and primary caregiver, is prohibited except in strict compliance with Section 20.70.030.

§ 20.70.030 INDOOR CANNABIS CULTIVATION.

It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the city to cause or allow such real property to be used for the cultivation of cannabis except in strict compliance with the requirements set forth below. For purposes of this Section 20.70.030, 'private residence' means a house, an apartment unit, a mobile home, or other similar dwelling, or otherwise as defined in Health and Safety Code Section 11362.2(b)(5), or any successor provision thereto.

A. Cannabis cultivation shall only occur indoors at a private residence, or inside an enclosed accessory structure located upon the grounds of a private residence.

B. Only persons twenty-one (21) years of age or older may cultivate cannabis. Any cannabis cultivation must comply with the requirements set forth in California Health and Safety Code sections 11362.1 and 11362.2.

C. Cannabis cultivation is permitted only within fully enclosed and secure structures capable of being locked.

D. Cannabis cultivation is limited to six (6) plants total being planted, harvested cultivated, dried or processed at one time at or upon any private residence, regardless of the number of residents, tenants, guests, or other persons occupying such residence.

§ 20.70.040 EXCEPTIONS.

A. Nothing in this chapter shall 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.

B. 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.

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

§ 20.70.050 VIOLATION AND PENALTY.

In addition to any other enforcement permitted by this Chapter 20.70 of the Brea 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 article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapter 1.04 of the Brea Municipal Code, no provision of this chapter authorizes 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 1.04 of the Brea Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern."

SECTION 7. As of the effective date of this Ordinance, Interim Ordinance Nos. 1183 and 1197 are hereby repealed.

SECTION 8. 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 9. Savings Clause. Neither the adoption of this Ordinance or the repeal of any provision of the Brea Municipal Code shall in any manner affect the prosecution for violations of ordinances or Code provisions, 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 10. The City Clerk shall certify to the adoption of this Ordinance.

APPROVED AND ADOPTED this _____ day of _____, 2017.

Mayor

ATTEST: _____
City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brea, held on the ____ day of _____, 2017, and was finally passed at a regular meeting of the City Council of the City of Brea on the _____ day of _____, 2017, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAINED: COUNCIL MEMBERS:

Dated: _____

City Clerk