

RESOLUTION NO. 4283

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT HUENEME, CALIFORNIA, ESTABLISHING APPLICATION REQUIREMENTS, MINIMUM QUALIFICATIONS, LOCATIONAL CRITERIA FOR MEDICINAL AND NONMEDICINAL CANNABIS ACTIVITY PURSUANT TO ARTICLES III AND X OF THE PORT HUENEME MUNICIPAL CODE, AND PROCEDURES FOR THE ANNUAL REVIEW OF DEVELOPMENT AGREEMENTS PURSUANT TO GOVERNMENT CODE SECTION 65865.1

Whereas, on June 5, 2017, the City Council adopted Ordinance No. 727 that amends Article III, Chapter 12 of the Port Hueneme Municipal Code ("PHMC") permitting medicinal cannabis activity within the City;

Whereas, On June 19, 2017, the City Council adopted Resolution No. 4178 to establish fees, application, and qualification requirements for persons or businesses seeking a Certificate of Approval for Medicinal Cannabis Activity within the City. This Resolution was adopted pursuant to Ordinance No. 727 and PHMC section 10201.C for the purpose of establishing fees, minimum qualification requirements, application procedures, and locational criteria for such Commercial Cannabis Activity;

Whereas, on December 18, 2017, the City Council adopted Ordinance No. 734 ("Ordinance") that amends Article III, Chapter 12 of the PHMC permitting medicinal and non-medicinal cannabis facilities and activity within the City following the voter approval of the "Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA");

Whereas, the Ordinance establishes the general requirements for obtaining approval for operating a commercial cannabis activity within the City of Port Hueneme and allowing cultivation for personal medicinal use as well as recreational uses;

Whereas, the Ordinance provides that the City Council may, by resolution, establish fees and application and qualifications requirements for persons seeking a Certificate of Approval for Commercial Cannabis Activity;

Whereas, PHMC Section 10201.C. allows for interpretive judgments as to the appropriate zones within which unspecified uses may be permitted based upon comparable uses and specified purposes of corresponding districts; and

Whereas, this Resolution ("Amended Implementing Resolution") is adopted pursuant to the Ordinance and PHMC Section 10201.C for the purpose of establishing fees, minimum qualification requirements, application procedures, periodic review procedures, and locational criteria for persons seeking approval of a Commercial Cannabis Activity.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PORT HUENEME DOES HEREBY RESOLVE:

SECTION 1: Under the provisions of PHMC Section 10201.C., the City Council finds and declares that:

A. Commercial.

1. "Commercial cannabis activity" (as defined in the Ordinance) includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, or of nonmedical cannabis or nonmedical cannabis products, except as set forth in Business & Professions Code section 19319, related to qualifying patients and primary caregivers;
2. The sale of commercial cannabis is an activity most closely aligned with the purpose of the C-1 Zone which is for general business and commercial uses (PHMC Section 10480) including, but not limited to, "Drug Store" which is allowed under PHMC Section 10481.A.14 as a permitted use;
3. Cultivation of commercial cannabis is an activity most closely aligned with "Nursery" which is also a permitted use within the C-1 Zone (PHMC Section 10481.A.30) and defined as "an area where plants are grown for transplanting, for use as stocks for budding and grafting, or for sale" (Merriam-Webster Dictionary);
4. Uses of structures which are incidental or accessory to any of the uses permitted in the C-1 Zone are also allowed including "possession, manufacture, processing, storing, laboratory testing, labeling, transporting and distribution" which comprise the balance of "commercial cannabis activity" (PHMC Section 10481.A.43);
5. No use within the C-1 Zone, whether expressly permitted or as an incidental activity to the principal use, is allowable if such use or associated operations are objectionable due to noise, odor, dust, smoke, vibration, or other similar causes (PHMC Section 10484);
6. In consideration of the facts, findings and regulatory provisions of the Ordinance, the potential impact of commercial cannabis activity could result in objectionable outcomes unless special measures are imposed as conditions of approval to ensure land use compatibility; and
7. As such, and by operation of PHMC Section 10482.I., the sale of commercial cannabis and associated incidental uses (i.e., cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting,

distribution) are most appropriately classed as “conditional uses” within the C-1 Zone.

B. Manufacturing.

1. “Facility” (as defined in the Ordinance) means a Commercial Cannabis Activity that occurs at a specific geographic location including, without limitation: cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, or nonmedical cannabis or a nonmedical cannabis product;
2. Cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, and distribution (without retail sales) are activities most closely aligned with the purpose of the M-1 Zone which is for industrial uses other than those requiring direct water adjacency together with selected commercial/industrial uses (PHMC Section 10540);
3. The production of commercial cannabis (encompassing those activities described in Paragraph 2 above) is most closely aligned with laboratory, research and manufacturing uses not otherwise specified as permitted uses within the M-1 Zone (PHMC Section 10542.F);
4. Laboratory, research and manufacturing uses not otherwise specified as permitted uses within the M-1 Zone are allowable as conditional uses so long as such uses are not injurious or detrimental to the public health, safety or welfare or to property in the vicinity or zone in which the use or uses will be situated (PHMC Section 10542); and
5. As such, and by operation of PHMC Section 10542.F., the production of commercial cannabis (encompassing those activities described in Paragraph 2 above) are most appropriately classed as “conditional uses” within the M-1 Zone.

C. Miscellaneous.

1. As a comparable conditional use within the C-1 (General Commercial) Zone, Commercial Cannabis Activity is likewise allowed within the R-4 (Mixed Use Residential) Zone by conditional use under the provisions of PHMC Section 10462.A; and
2. Personal cultivation of cannabis for medicinal or nonmedicinal purposes (as a permitted use) is: (i) most closely associated with detached single-family properties with outdoor space suitable for growing and harvesting; and (ii) is comparable to private greenhouses, gardens and trees specified in PHMC Section 10401.B.

D. Declarations. Based on the foregoing, it is hereby determined as follows:

1. Commercial Cannabis Activity may be allowed as a conditional use within the R-4, C-1 and M-1 Zones. Such use shall be subject to, and contingent upon, issuance of a Development Permit by operation of PHMC Section 10352.A.2. Commercial Cannabis Activity shall not be permitted or conditionally permitted in any other zone.
2. Personal cultivation of cannabis for medicinal or nonmedicinal purposes may be allowed as a permitted use only within the R-1 (Single Family) Zone, and in no other zone. Such use shall be subject to, and contingent upon, issuance of a Ministerial Permit by operation of PHMC Section 10354.
3. Except or unless the terminology used herein conflicts with the PHMC or requires a different meaning within the context of Commercial Cannabis Activity, the terms and definitions contained in the Ordinance shall govern. Otherwise, the provisions of PHMC Section 10201.C. shall be utilized to reconcile any such conflicts

SECTION 2: This Section of the Resolution is adopted pursuant to, and by the authority of, the Ordinance. In addition to the general application requirements set forth in PHMC Sections 10352 (Development Permits) or 10354 (Ministerial Permits), applications, for a Certificate of Approval under Chapter 12, Article III of the PHMC for a Commercial Cannabis Activity, and applications for a Ministerial Permit for cultivation of cannabis for personal use, must include the following:

- A. **Application Filing.** Each application must: (i) be filed on forms prescribed by the City; and (ii) include the following basic information and certifications:
 1. Every application must be signed by the commercial proprietor and/or residential occupant (as the case may be), under penalty of perjury, along with the property owner of record;
 2. The name, mailing address, and contact information for the person filing the application, along with the name, address and contact information for the business/individual for which the Certificate or Permit is sought; and
 3. Evidence of site control by means of ownership, lease or letter of intent from the property owner (with name, address, contact information, and signature of the property owner on the application).
- B. **Commercial Cannabis Activity.** Each application entailing a Commercial Cannabis Activity, as such term is defined in the Ordinance, shall be accompanied with the following information and documents:

1. **Physical Plan.** A graphic depiction of the proposed business location including site plan, floor plan and proposed improvements of sufficient detail to clearly communicate the realm, character and physical attributes of the proposed operations. The physical plan shall also include a map, of measurable scale, to depict the proposed business location relative to: (i) the distance to schools within 600 feet of the site; and (ii) the type of land uses within 600 feet of the site.
2. **Qualifications Statement.** A detailed resume of each person having an ownership interest in the proposed business including all training, certifications, education, licenses and all relevant credentials demonstrating a working knowledge of federal, state and local laws, regulations and guidelines governing commercial cannabis. The resume shall also list all relevant business experience including the location and duration of other comparable facilities operated by the owner.
3. **Business Operations.** A business operating plan consisting of: (i) a narrative outlining the scope of physical improvements and timing of occupancy; (ii) hours of operation, signage and advertising; (iii) number and classification of all employees; (iv) number and location of off-street parking spaces required to accommodate employees, customers and deliveries; (v) availability of off-street parking and impact on shared arrangements; and (vi) staging, frequency and scheduling of deliveries to and from the site.
4. **Safety Precautions.** A detailed description of fire prevention, suppression, HVAC and alarm systems that includes an assessment of fire safety by a qualified fire prevention/suppression consultant. The analysis and associated recommendations shall consider all possible fire hazards, storage/handling of hazardous materials, and inhalation issues/threats. The assessment shall provide an evaluation of all potential risks along with recommendations to affirmatively further public health, safety and welfare.
5. **Security Plan.** A narrative and detailed security plan, prepared by a professionally licensed security consultant with extensive experience in the cannabis industry, including, without limitation, operating procedures, facility design schematics, and technological security features, measures for securing ingress and egress to the premises, protecting the building perimeter (including patrolling for vagrancy and loitering), safeguarding products and cash maintained onsite, use of cameras and video equipment to monitor activities and number/credentials of security personnel to be employed. The Security Plan must be approved by the Chief of Police, and he or she may require modifications in the interests of public health, safety and welfare.

6. **Applicant Credentials.** A criminal history background report for each person having an ownership interest in the proposed business that demonstrates, to the reasonable satisfaction of the Chief of Police, that such individuals do not pose a threat to public health, safety or welfare by virtue of their involvement in the proposed business. Each person who is employed in the proposed business shall also submit to a criminal background investigation for review and approval by the Chief of Police as a condition of employment.
7. **Regulatory Compliance.** A detailed explanation as to: (i) how cannabis will be tracked and monitored to prevent diversion in compliance with applicable federal, state and local laws; (ii) how transactions will be recorded, monitored and audited to assure that all purchases and sales are fully documented; (iii) how cash will be managed and secured; and (iv) measures to assure that the City will receive the required amount of taxes and license fees that apply to the proposed business.
8. **Product Handling.** A detailed description of all products to be produced, processed, packaged and sold as part of the proposed business. The description shall indicate how products will be packaged and displayed for sale, disclosures as to strength and content, quality control measures including laboratory testing, consultation with customers as to products best suited for their particular medical circumstance, and safeguards as the type and amount of product that can be sold to a specific customer.
9. **Neighborhood Compatibility.** A narrative describing how the proposed business will be managed and operated so as to avoid becoming a nuisance or having impact on its neighbors and the surrounding community including, but not limited to: (i) compliance with the performance standards set forth in PHMC Section 10227; (ii) prevention of vagrancy, loitering and disruptive behavior; and (iii) enforcement of the terms and conditions of Permit approval.
10. **Community Benefits.** A detailed description of benefits that the proposed business would provide to the local community such as employment of local residents, voluntary contributions to civic organizations, sponsorship of community events, revenue enhancement for the City, "green" business practices relating to energy usage, water conservation and waste management, serving a need not presently provided, and similar such opportunities.
11. **Financial Consideration.** A contractual pledge of revenue to: (i) offset the cost of application processing and permit renewal; (ii) reimburse the City for recurring costs of monitoring, auditing and enforcement; (iii) augment general revenues of the City through business license fees specific to Commercial Cannabis Activities that are not currently recognized under the PHMC; and (iv) indemnify the City and pay all costs resulting from any and all legal challenges associated with issuance of a Development Permit and/or approval of a Development

Agreement, and/or the Certificate of Approval, and the true and accurate financial statement of the applicant, and, at the option of the City, all those having an ownership interest in the proposed or existing business.

12. **Business Acumen.** A detailed description of overall financial wherewithal and business acumen to establish, conduct and sustain the proposed operations including: (i) working capital to underwrite property improvements and recurring costs; (ii) experience in the successful development, marketing, and maintenance of comparable businesses; and (iii) a three-year financial proforma/business plan evidencing financial viability.

13. **Development Agreement.** A proposed Development Agreement, substantially in the form provided by the City, that incorporates, at a minimum: (i) the Financial Considerations specified in Section 2, Paragraph B.11 of this Resolution; (ii) interconnection of the Development Agreement with provisions for mutual termination and/or survivability of covenants in the event of violation, invalidation or revocation of either entitlement; and (iii) indemnification of the City and all officials thereof from actions by third parties including, but not limited to, enforcement of conflicting State and Federal laws.

C. **Private Cultivation.** Each application for a Ministerial Permit for outdoor private cultivation for personal medicinal purposes shall be accompanied with the following information and documents:

1. **Physical Plan.** A graphic depiction of where the cultivation activities are proposed including site plan and proposed improvements of sufficient detail to clearly communicate the realm, character and physical attributes of the proposed operations. The physical plan shall also include a map, of measurable scale, to depict the proposed location relative to: (i) the distance to schools within the 600 feet of the site; and (ii) the type of land uses within 600 feet of the site.

2. **Qualifications Statement.** A qualifications statement consisting of: (i) a title report (or equivalent) evidencing that the applicant is the legal owner of record and current occupant, where occupancy is authorized by the owner of record of the property for which private cultivation is proposed; (ii) criminal history background report for the applicant that demonstrates, to the reasonable satisfaction of the Chief of Police, that the applicant does not pose a threat to public health, safety or welfare by virtue of the proposed cultivation; and (iii) documentation that validates the applicant's legal entitlement to grow and consume cannabis for medicinal purposes.

D. **Confidentiality.** At the request of the applicant, and at the discretion of the City Manager and Chief of Police, and with consent of the City Attorney, application material may be withheld from public review in the event that such disclosure could:

(i) compromise public safety by virtue of divulging information concerning security measures, surveillance procedures or business operations of a highly sensitive nature; (ii) entail proprietary information which could advantage competitors to the financial or business detriment of the applicant; or (iii) publicly identify persons and locations engaged in cultivation for personal use, which could be used to target them for burglary or theft.

SECTION 3: Review of Applications. This Section of the Resolution is adopted pursuant to, and by the authority of, the Ordinance. In addition to all other requirements of applicable law including, without limitation, PHMC Article X, applicants for a Certificate of Approval to operate a commercial cannabis activity will be subject to the following:

- A. **Application Screening.** An application for a Ministerial Permit for personal use cultivation or a Development Permit for a Commercial Cannabis Activity shall be evaluated for completeness in accordance with the provisions of PHMC Section 10352 and 10354, as applicable; provided, however, that (as provided in the Ordinance) approval of a Certificate of Approval is a prerequisite for a Development Permit for a Commercial Cannabis Activity, and consequently the Development Permit application shall not be deemed complete until the applicant has obtained a Certificate of Approval for the facility. An application shall only be accepted upon a favorable determination that such application contains all of the materials specified in PHMC Sections 10352 and 10354 along with the information and documents specified in Section 3 of this Resolution.
- B. **Evaluation of Applications.** Upon a determination the application is complete, an application for a Development Permit or a Ministerial Permit shall be evaluated within the time and manner specified in PHMC Section 10352 and 10354, as applicable. A Certificate of Approval, Development Permit, or Ministerial Permit for a Commercial Cannabis Activity or personal cultivation for medicinal use shall only be issued upon a favorable ruling by the decision maker that the application, considering the whole of the record and proposed conditions of approval, meet all applicable requirements of the PHMC, the Ordinance, this Resolution, any AP&P, as defined in Section 6 below, promulgated pursuant to Section 6 below, and the following standards:
1. **Certificate of Approval or Development Permit.** For a Certificate of Approval or Development Permit, that the applicant, owners and operators: (i) possess the required licenses, certifications and authorities to conduct the proposed Commercial Cannabis Activity; (ii) are of good character, honesty, and integrity, whose background, reputation and associations do not present a substantial risk that the activity will result in adverse consequences; (iii) have a successful track record in operating comparable cannabis related businesses; (iv) evidence sufficient financial capacity and operational wherewithal; and (v) demonstrate that the use or uses proposed will not be injurious or detrimental to the public health, safety or welfare or to property in the vicinity or zone in which the use or

uses will be situated. In applying these criteria to the evaluation of applications for a Certificate of Approval, the City Manager or designee shall use the scoring criteria and process set forth in Attachment "A" to this Resolution which is hereby incorporated into and approved as part of this Resolution, entitled "Application Procedure to Operate a Medicinal Cannabis Facility in Port Hueneme" ("Application Procedures").

2. **Ministerial Permit.** For a Ministerial Permit, that the applicant: (i) possesses the required licenses, certifications and authorities to cultivate cannabis for personal medicinal use; and (ii) is of good character, honesty, and integrity, and is a person whose background, reputation and associations do not present a substantial risk that the proposed cultivation will result in adverse consequences.

C. **Decision Maker.**

1. **Ministerial Permit.** The decision on an application for a Ministerial Permit for personal use cultivation shall be made by the Director of Community Development or his designee and shall be final as provided in PHMC Section 10354.C.
2. **Development Permit.** The decision on an application for a Development Permit for a Commercial Cannabis Activity shall be made by the City Council and shall be final as provided in PHMC Section 10352.F.
3. **Certificate of Approval.** The decision on an application for a Certificate of Approval for a Commercial Cannabis Activity shall be made by the City Manager or his designee, with a right of appeal to City Council as provided in this paragraph. Upon reaching a final decision on such an application, the City Manager or designee shall provide written notice thereof to the applicant and to any person who has previously requested in writing notice of the decision. Any person aggrieved by the decision may, within ten calendar days following the date of the notice of decision, deliver to the City Manager in writing a written appeal describing the appellant's objections to the decision. Upon receipt by the City Manager of a timely appeal, the City Manager or designee shall promptly give written notice to the applicant and the appellant that an appeal has been taken and that the matter will be considered and heard by the City Council at a regular or adjourned regular meeting, the date of which shall be set forth in the notice, but in no event, to be more than forty-five (45) days or less than ten (10) days after such notice is mailed to the applicant and appellant. The City Council at the time of such hearing, shall consider all matters pertinent thereto and by its next meeting after such hearing, the City Council shall render its decision either upholding or reversing the action of the City Manager or designee, and/or modifying actions and conditions of the decision appealed from. Written notice thereof, unless waived by the applicant and/or appellant at the time of the

hearing, shall promptly be mailed to the applicant and appellant by the City Manager or designee. The decision of the City Council shall be deemed final and conclusive.

- D. **Conditions of Approval.** The decision maker may approve or deny in its discretion any application for a Ministerial Permit, Development Permit or Certificate of Approval pursuant to this Resolution, and may condition any approval with such terms and conditions as the decisionmaker determines are in furtherance of the purposes hereof.

SECTION 4: PERIODIC ANNUAL REVIEW OF DEVELOPMENT AGREEMENTS. In accordance with Government Code sections 65865 and 65865.1 requiring “periodic review [of development agreements] at least every twelve months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement,” the City Council will review every development agreement authorized by this Resolution for compliance with the following criteria:

- A. Performance of all material terms of the development agreement, which include, without limitation:
1. Payment of contractual payments amounting to no less than five percent of the annual gross revenues, unless another amount is specified in the development agreement;
 2. Review of the developer’s annual audited financial statement;
 3. Review of any audits conducted by the City of Port Hueneme, if any;
 4. Compliance with the City’s Ordinances, any discretionary or ministerial permits, or other regulations to which the Commercial Cannabis Activity may be subject.
- B. Compliance with the public benefits summary, as identified in each development agreement, which include, without limitation:
1. Providing a long-term source of employment opportunities and assisting in the revitalization of the economic base of the community;
 2. Providing the City directly with additional revenue in the form of an increase in certain taxes;
 3. Providing additional monies for the City’s general fund through contractual payments to the City; and
 4. Providing certain community benefits.

SECTION 5: Environmental Review. This Resolution is exempt from additional review under the California Environmental Quality Act (California Public Resources Code §§21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§15000, et seq.).

- A. On the basis of evidence provided, and for the reasons set forth in Section 3, Paragraphs B and C, and Section 5 of the Ordinance, will not adversely affect adjoining property as to value or precedent, and will not be detrimental to the area.
- B. The Resolution does not authorize any new construction or use; rather, it merely prescribes a process that requires the vetting of environmental, land use and operational issues in connection with each permit application. As such, the Resolution is not a "project" under CEQA because: (1) it establishes "general policy and procedure making" (CEQA Guidelines § 15378(b)(2); and (2) it constitutes "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment" (CEQA Guidelines 15378(b)(5)).
- C. The Resolution is self-mitigating insofar as it provides the means for avoiding environmental impacts, if any are identified, as part of each discretionary permit application. As stipulated in PHMC Section 10352C(7), each conditional use application is subject to separate environmental review under CEQA. Furthermore, as stipulated in PHMC Sections 10482 and 10542, conditional uses within the R-4, C-1 and M-1 zones may only be allowed so long as they will not be injurious or detrimental to the public health, safety or welfare or to property in the vicinity or zone in which the use or uses will be situated.
- D. Issuance of ministerial permits for personal, non-commercial cultivation is categorically exempt as a Class 1 or Class 5 project in so far, at best, the activities that are authorized would constitute a minor alteration of existing public structures involving no expansion of use, or a minor alteration in land use limitations (see 14 CCR §§15301, 15305).

SECTION 6: Delegation of Authority. While this Resolution establishes the minimum requirements and qualifications for persons seeking to obtain a Certificate of Approval, the City Manager, or designee, is authorized to promulgate from time to time administrative policies and procedures ("AP&P") that implement PHMC Article III and this Resolution. The AP&P may add additional requirements, procedures and criteria but shall be consistent with the intent of PHMC Article III and this Resolution.

SECTION 7: The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Port Hueneme and the City Clerk, or her duly appointed deputy, may attest thereto.

SECTION 8: This Resolution shall take effect immediately upon its passage.

SECTION 9: The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

Passed and Adopted on this 3rd day of September 2019.



Will Berg
Mayor

Attest:



Kristy Buxkemper
City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF VENTURA)

I, Kristy Buxkemper, City Clerk of the City of Port Hueneme, California, do hereby certify that the foregoing Resolution No. 4283 was duly adopted at the Regular meeting of the City Council on the 3rd day of September 2019, by the following vote:

AYES: Muñoz-Schnopp, Hernandez, Gama, Rollins, Berg

NOES:

ABSENT:

ABSTAIN:



Kristy Buxkemper
City Clerk