

## ORDINANCE NO. 1539

### **AN ORDINANCE OF THE CITY OF BANNING APPROVING ZONE TEXT AMENDMENT NO. 18-97505, AMENDING CHAPTER 17.54 OF TITLE 17 OF THE BANNING MUNICIPAL CODE TO ELIMINATE THE SEPARATION REQUIREMENT BETWEEN CANNABIS RETAILERS, AND CLARIFYING THE ELIGIBILITY TO OBTAIN A CANNABIS RETAILER CONDITIONAL USE PERMIT, AND MAKING A DETERMINATION PURSUANT TO CEQA**

WHEREAS, on October 3, 2018, the Planning Commission of the City of Banning held a duly noticed public hearing regarding Ordinance 1531 which would add Chapter 17.54 to the Zoning Code pertaining to cannabis retailer conditional use permits. At the conclusion of the Planning Commission hearing, and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2018-18 recommending that the City Council adopt Ordinance 1531 to allow cannabis retailers as a conditionally permitted use in the Highway Serving Commercial zone. The Planning Commission further recommended that Ordinance 1531 be revised to delete the 600-foot separation requirement between cannabis retailers; and

WHEREAS, on October 23, 2018, the City Council of the City of Banning held a duly noticed public hearing on Ordinance 1531, at which time all persons interested in this Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony, the City Council closed the public hearing and conducted a first reading of Ordinance 1531. The City Council revised Ordinance 1531 to re-insert the 600-foot separation requirement between cannabis retailers that had been deleted by the Planning Commission; and

WHEREAS, on November 13, 2018, the City Council adopted Ordinance 1531; and

WHEREAS, staff has been drafting procedures to process cannabis retailer regulatory permits. Through this process, staff has determined that since cannabis retailers are only permitted to operate in a specific segment of the Highway Servicing Commercial zone, the 600-foot separation requirement between cannabis retailers will unduly restrict the properties on which these type of businesses are allowed to operate. Furthermore, staff has determined that conducting a lottery is the preferred method for selecting the cannabis retailers that will be eligible to obtain a cannabis conditional use permit, and having a 600-foot separation requirement between cannabis retailers will unduly complicate the lottery process; and

WHEREAS, the Community Development Director and City Manager are requesting that the City Council reconsider the 600-foot separation requirement between cannabis retailers and to now amend Chapter 17.54 to delete the 600-foot separation requirement between cannabis retailers; and

WHEREAS, the Planning Commission has already considered this issue and provided its recommendation on the subject of a 600-foot separation requirement between cannabis retailers in connection with its review of Ordinance 1531 such that the City is not required to resubmit the matter back to the Planning Commission prior to having the City Council consider this issue again; and

WHEREAS, the Ordinance also makes some general revisions that clarify the eligibility to obtain a cannabis conditional use permits. These revisions do not change any property from one zone to another or impose any regulation listed in Government Code Section 65850 not theretofore imposed or remove or modify any such regulation theretofore imposed. As such, consistent with Government Code Section 65853 these clarifying revisions do not to be first considered by the Planning Commission for a recommendation to the City Council nor do these revisions need to be noticed to the public.

WHEREAS, on December 11, 2018, the City Council held a duly noticed public hearing to consider Zone Text Amendment No. 18-97505, and following the receipt of all evidence, the City Council closed the public hearing; and

WHEREAS, Zoning Text Amendment No. 18-97505 is considered a "project" pursuant to the California Environmental Quality Act (CEQA). 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 proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project by itself does not result in any physical changes in the environment.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

## **SECTION 1. ENVIRONMENTAL FINDINGS**

### **A. California Environmental Quality Act.**

The City Council finds and determines the Zoning Code Amendment 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 proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project by itself does not result in any physical changes in the environment. The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

### **B. Multiple Species Habitat Conservation Plan (MSHCP).**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

## **SECTION 2. ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 18-97505.

**Finding No. 1:** Proposed Zone Text Amendment No. 18-97505 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97505 is consistent with the goals and policies of the General Plan. The Banning voters approved a tax measure on cannabis retailers. It is in the public interest to regulate cannabis, to allow for responsible and lawful retail cannabis sales in the City. With adequate regulation and oversight limited cannabis retail sales in the City are consistent with the following General Plan goals and policies:

### **Economic Development Element:**

#### Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

#### Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

#### Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 18-97505 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97505 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating retail cannabis sales so as to avoid the risks of criminal activity, malodorous smells, and degradation of the natural environment.

**Finding No. 3:** The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that the Zoning Code Amendment 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 proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project of and by itself does not result in any physical changes in the environment.

**SECTION 3.** The City Council hereby amends Subsection B of Section 17.54.030 (Cannabis Retailer Conditional Use Permit - Application Fees and Terms) of Chapter 17.54 (Cannabis Retailer Conditional Use Permits) of Title 17 (Zoning) as follows (with deletions appearing in strikethrough text and additions appearing in underlined text), with all other provisions of Section 17.54.030 remaining unchanged:

"B. Each cannabis retailer premises shall require a separate cannabis retailer conditional use permit. Two cannabis retailer premises in the City may not operate under one cannabis retailer conditional use permit. No holder of a cannabis retailer conditional use permit for one premises shall have an ownership interest in any other cannabis retailer lawfully or unlawfully operating in the City. Accordingly, no cannabis retailer conditional use permit shall be issued for an applicant, business entity, or person that has an ownership interest in any other cannabis retailer in the City and no cannabis retailer conditional use permit shall be issued if the applicant, owner or person with a direct financial interest in the cannabis business also has an ownership or other direct financial interest in any other commercial cannabis business retailer that is operating in the City or that has obtained a conditional use permit."

**SECTION 4.** The City Council hereby amends Subsection B of Section 17.54.080 (Separation Requirements and Other Limitations.) of Chapter 17.54 (Cannabis Retailer Conditional Use Permits) of Title 17 (Zoning) as follows (with deletions appearing in strikethrough text and additions appearing in underlined text), with all other provisions of Section 17.54.080 remaining unchanged:

"B. No cannabis business shall be located within a 200-foot radius of any residential zoning district. No cannabis business shall be located within a 600-foot radius of any day care center, youth center, public or private school providing instruction in kindergarten or any of grades 1-12, ~~or park, or any other retail cannabis business that is lawfully operating in the City and that is in existence at the time the cannabis conditional use permit is issued.~~ The 600-foot distance requirement does not include any private school in which education is primarily conducted in a private home or a family day care home. The distances specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection."

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

**SECTION 6. Savings Clause.** Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Banning Municipal Code, committed prior to the effective date hereto, nor be construed as a waiver of any license or penalty or the penal provision applicable to any violation thereof.

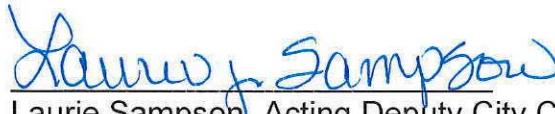
**SECTION 7. Certification.** The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Banning  
on this 8th day of January, 2018.



Arthur L. Welch  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**



Laurie Sampson  
Laurie Sampson, Acting Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**



Kevin G. Ennis  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1539 was duly introduced at a regular meeting of the City Council of the City of Banning held on the 11<sup>th</sup> day of December, 2018, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2019 by the following vote, to wit:

AYES: Council Members Andrade, Happe, Peterson, Wallace and Mayor Welch

NOES: None

ABSENT: None

ABSTAIN: None

  
Laurie Sampson, Acting Deputy City Clerk  
City of Banning, California