

**Attachment**

## ORDINANCE NO. 344

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA, AMENDING LAKE FOREST MUNICIPAL CODE SECTIONS 5.42.090 AND 5.42.100 RELATED TO MARIJUANA TESTING LABS

**WHEREAS**, the City of Lake Forest, California (the “City”) is a municipal corporation, duly organized under the Constitution and laws of the State of California; and

**WHEREAS**, Article 11, section 7 of the California Constitution provides cities with the authority to make and enforce within their limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, in November 2016, the voters of California passed Proposition 64 (known as the “Adult Use of Marijuana Act” or “AUMA”), which legalized recreational marijuana use and personal cultivation; and

**WHEREAS**, after the passage of the AUMA, the California Legislature passed the Medicinal and Adult Use Cannabis Regulation and Safety Act (known as the “MAUCRSA”), which consolidates the state’s regulatory scheme for medicinal marijuana with the regulatory scheme provided by the AUMA to provide for one licensing structure for all marijuana related uses; and

**WHEREAS**, under the MAUCRSA (see e.g., Business and Professions Code section 26200), cities retain their ability to regulate commercial marijuana activity related to medicinal and adult recreational uses; and

**WHEREAS**, on February 18, 2020, the City Council approved an ordinance that allows up to two marijuana testing labs with a City-issued permit in certain industrial zoning districts. The ordinance included amendments to Lake Forest Municipal Code (“LFMC”) Chapters 9.04, 9.10, and 9.72 and added a new Chapter 5.42; and

**WHEREAS**, pursuant to LFMC Sections 5.42.090 and 5.42.100, the marijuana testing lab permit application process for new and renewed permits includes a requirement for the applicant and all owners to provide receipt of a completed live scan report from the Orange County Sheriff’s Department (“OCSD”); and

**WHEREAS**, in May of 2020, OCSD informed the City that OCSD would not conduct background checks for applicants and owners of marijuana testing labs.

In light of this development, this Ordinance removes the OCSD live scan requirement from LFMC Sections 5.42.090 and 5.42.100; and

**WHEREAS**, on January 5, 2021, the City Council considered the staff report, recommendations by staff and the City Attorney, and public testimony regarding this Ordinance's amendments to LFMC Sections 5.42.090 and 5.42.100.

**WHEREAS**, all legal prerequisites prior to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1.**      Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.**      CEQA. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") because this Ordinance does not qualify as a "project" under CEQA and because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060 (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, this Ordinance simply deletes the live scan background check requirement from the City's regulations governing applications for marijuana testing lab permits. This Ordinance will not result in any construction or development and it will not have any other effect that would physically alter the environment. Thus, for these reasons, the Ordinance does not qualify as a project subject to CEQA. In the alternative, even if the Ordinance did qualify as a "project" under CEQA, it would be exempt under CEQA pursuant to Business and Professions Code Section 26055(h), which provides, in part, that CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity."

**SECTION 3.** Section 5.42.090 of Title 5 of the Lake Forest Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikethrough~~):

**"5.42.090    Marijuana testing lab permit application requirements.**

A. An application for a marijuana testing lab permit shall be made to the City Manager on a form provided for by the City Manager. Failure to disclose information fully and accurately could lead to the denial of a permit. To be

deemed complete and submitted for City Manager review, an application must contain at least the following information:

1. Evidence that the marijuana testing lab is authorized by the property owner to operate in the proposed location.
2. Map showing that any portion of the building that includes the proposed marijuana testing lab is located at least six hundred (600) feet away from any building or outdoor play area related to a school or a day care center, as defined in Health and Safety Code Section 1596.76, that is in existence at the time of date of the application.
3. For the applicant and all owners: name and title, percent ownership in the proposed business, mailing address, phone number, email address, copy of government-issued identification.
- ~~4. For the applicant and all owners, provide receipt of a completed live scan report from the Orange County Sheriff's Department, which costs shall solely be borne by the applicant.~~
4. Whether the applicant and/or any owner has been denied a license or permit related to a marijuana use or has had a license or permit related to a marijuana use suspended or revoked by the State or any other local jurisdiction in the past two (2) years. In the event a license or permit has been denied, suspended or revoked, the applicant shall provide details relating to the type of license or permit applied for, the name of the licensing or permitting authority that made the determination, and the date of denial, suspension, or revocation.
5. A detailed security plan, including a floor plan and written narrative describing measures and methods that will be implemented to deter and prevent the unauthorized entrance into areas containing marijuana or marijuana products, and to deter and prevent the theft of marijuana or marijuana products at the marijuana testing lab, including during any power outage. The security plan shall include narrative regarding how the applicant will meet all operational requirements in Section 5.42.180.
6. A marijuana waste and discharge plan that ensures that marijuana sample remnants will be disposed of in a manner that is consistent with State law.
7. The name, address, email address, and phone number of a designated security representative/liaison to the City, who would be reasonably available to meet with the City Manager regarding any security related measures and/or operational issues.

8. A detailed ventilation plan describing the air treatment system, or other measures and methods that will be implemented to prevent offensive odors generated from the testing and/or storage of marijuana from being detected outside the buildings on the site.
9. For the applicant and each owner: An attestation to the following:

“Under penalty of perjury, I hereby do declare that the information contained within the application is complete, true, and accurate. I understand that any misrepresentation on this application is cause for its rejection, denial of a license, or revocation of a permit.”
10. For the applicant and each owner: An attestation that each and every person or entity agrees to indemnify, defend (at his/her/its sole cost and expense), and hold the City of Lake Forest, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City’s issuance or failure to issue a marijuana testing lab permit, the City’s decision to approve or its refusal to approve the operation of the marijuana testing lab, the process used by the City in making its decision, or the alleged violation of any Federal, State or local laws by the marijuana testing lab or any of its officers, employees or agents.
11. Any other additional information requested by the City Manager.”

**SECTION 4.** Section 5.42.100 of Title 5 of the Lake Forest Municipal Code is hereby amended read as follows (additions shown in underline and deletions shown in ~~strikethrough~~):

**“5.42.100 Marijuana testing lab permit renewal requirements.**

- A. An application for a marijuana testing lab renewal permit shall be made to the City Manager on a form provided for by the City Manager. An application for renewal of a marijuana testing lab permit shall be filed at least ~~sixty (60)~~ calendar days prior to the expiration date of the current permit. Failure to disclose information fully and accurately could lead to the denial of a renewal permit. For a renewal application to be deemed complete for the City Manager’s review, an application shall contain at least the following information:
  1. Evidence that the marijuana testing lab is authorized by the property owner to operate in the proposed location.

2. For the applicant and all owners: name and title, percent ownership in the proposed business, mailing address, phone number, email address, copy of government-issued identification.
- ~~3. For the applicant and all owners, provide receipt of a completed live scan report from the Orange County Sheriff's Department, which costs shall solely be borne by the applicant.~~
3. Whether the applicant and/or any owner has been denied a license or permit related to a marijuana use or have had a license or permit related to a marijuana use suspended or revoked by the State or any other local jurisdiction in the past year. In the event a license or permit has been denied, suspended or revoked, the applicant shall provide details relating to the type of license or permit applied for, the name of the licensing or permitting authority that made the determination, and the date of denial, suspension, or revocation.
4. For the applicant and each owner: An attestation to the following:

"Under penalty of perjury, I hereby do declare that the information contained within the application is complete, true, and accurate. I understand that any misrepresentation on this application is cause for its rejection, denial of a license, or revocation of a permit."
5. For the applicant and each owner: An attestation that each and every person or entity agrees to indemnify, defend (at his/her/its sole cost and expense), and hold the City of Lake Forest, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance or failure to issue a marijuana testing lab permit, the City's decision to approve or its refusal to approve the operation of the marijuana testing lab, the process used by the City in making its decision, or the alleged violation of any federal, State or local laws by the marijuana testing lab or any of its officers, employees or agents.
6. Written confirmation that there are no changes to the approved security plan, marijuana waste and discharge plan, or ventilation plan.
7. Any other additional information requested by the City Manager."

**SECTION 5. 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 6. Publication.** The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a Certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

**SECTION 7. Custodian of Records.** This Ordinance is on file and has been available for public review for at least five days prior to the date of this Ordinance, in the City Clerk's office, at Lake Forest City Hall, 100 Civic Center Drive, Lake Forest, California 92630.

**SECTION 8. Effective Date.** This ordinance shall be effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this 19th day of January 2021.

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SCOTT VOIGTS, MAYOR

ATTEST:

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LISA BERGLUND, CITY CLERK

APPROVED AS TO FORM:

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MATTHEW E. RICHARDSON, CITY ATTORNEY

STATE OF CALIFORNIA        )  
COUNTY OF ORANGE        ) ss.  
CITY OF LAKE FOREST        )

I, Lisa Berglund, City Clerk of the City of Lake Forest, California do hereby certify that the foregoing Ordinance No. 344 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 5th day of January 2021, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 19th day of January 2021, by the following vote, to wit:

AYES:           COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:  
ABSTAIN:       COUNCIL MEMBERS:

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LISA BERGLUND  
CITY CLERK

CERTIFICATION STATEMENT

I, Lisa Berglund, City Clerk of the City of Lake Forest, do hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance No. 344, passed by the people of the City of Lake Forest, as declared by the City Council on the day and year set forth above, and published pursuant to law.

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LISA BERGLUND  
City Clerk