

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF CAPITOLA AMENDING SECTIONS 5.36.030 AND 9.61.040 OF THE MUNICIPAL CODE TO ALLOW DELIVERY OF CANNABIS FROM ANY BUSINESS LOCATED IN SANTA CRUZ COUNTY AND TO IMPLEMENT BUSINESS AND PROFESSIONS CODE SECTION 26320 RELATED TO MEDICINAL CANNABIS DELIVERY**

**WHEREAS**, the City's current Municipal Code prohibits the delivery of medicinal and recreational cannabis within the City limits; and

**WHEREAS**, Business and Professions Code Section 26200 allows for local jurisdictions to adopt, implement and enforce local ordinances to regulate cannabis businesses; and

**WHEREAS**, allowing delivery of cannabis to residents within Capitola increases access to cannabis for those who may not be mobile; and

**WHEREAS**, allowing delivery of cannabis from businesses located within the County of Santa Cruz supports local businesses, while maintaining local control over cannabis regulations; and

**WHEREAS**, other jurisdictions within Santa Cruz County are considering similar allowances, and aligning the City of Capitola's regulations with other local regulations aids in enforcement; and

**WHEREAS**, SB-1186 (Chapter 395, Statutes of 2022) amended Section 26200 and enacted Chapter 26, commencing with Section 26320, to the Business and Professions Code, effective January 1, 2023; and

**WHEREAS**, these provisions enact the Medicinal Cannabis Patients' Right of Access Act, which, beginning on January 1, 2024, prohibits the City from adopting or enforcing any regulation that prohibits the retail delivery sale within the City of medicinal cannabis to medicinal cannabis patients or their primary caregivers by medicinal cannabis businesses; and

**WHEREAS**, the Medicinal Cannabis Patients' Right of Access Act prohibits local jurisdictions from prohibiting or unreasonable restricting medical cannabis delivery by limited the number of businesses allowed to deliver, the operating hours of such businesses, the number or frequency of medicinal cannabis sales, or the types or quantities of medicinal cannabis allowed to be sold; and

**WHEREAS**, the Medicinal Cannabis Patients' Right of Access Act prohibits local jurisdictions from prohibiting physical medicinal cannabis retail delivery stores to operate within their jurisdiction if the City did not have at least one physical store that was allowed to sell medicinal cannabis as of January 1, 2022; and

**WHEREAS**, the City Council desires to implement regulations on the delivery and sale of both recreational and medicinal cannabis within the City limits.

**BE IT ORDAINED** by the City of Capitola as follows:

**Section 1.** The above findings are adopted and incorporated herein.

**Section 2.** Section 9.61.040 (Prohibited Activities) is amended as follows:

**Subsection D is added as follows:**

D. Notwithstanding the foregoing:

1. Holders of a State retail dispensary license, which are located in any jurisdiction, may deliver medicinal cannabis via mobile delivery to a consumer's premises in the City. Medicinal cannabis delivery businesses located in the City of Capitola shall obtain a City of Capitola business license and have a valid cannabis retailer license.

2. Retail delivery businesses located within any jurisdiction within Santa Cruz County may deliver within the City if they are licensed to do so by the State and the jurisdiction in which they are located. Such businesses may be required to obtain a City of Capitola business license consistent with Chapter 5.04 – Business Licenses and Fees and, if physically located within the City of Capitola, must also have a valid cannabis retailer license consistent with Chapter 5.36 – Retail Cannabis Licenses.

**Section 3.** Section 5.36.030 (Cannabis retail business – license required) is amended as follows:  
**Subsection 15 is added as follows:**

15. Notwithstanding the requirements of this section, recreational and medicinal cannabis delivery shall be permitted in the City as outlined in Section 9.61.040.

**Section 4.** Environmental Review.

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378).

**Section 5.** Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

**Section 6.** Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

**Section 7.** Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the 10<sup>th</sup> day of November, 2022, and was adopted at a regular meeting of the City Council on the 22<sup>nd</sup> day of November, 2022, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Sam Storey, Mayor

Attest: \_\_\_\_\_  
Julia Moss, City Clerk