

CITY OF RIVERBANK

ORDINANCE NO. 2021-001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT AMENDMENT BY AND BETWEEN THE CITY OF RIVERBANK AND E & J DISTRIBUTORS LLC. (CURRENTLY DOING BUSINESS AS CANNA+RISE TO ADD A SECOND CANNABIS BUSINESS A CALIFORNIA LIMITED LIABILITY CORPORATION DOING BUSINESS AS TERMINAL INFUSION

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.*, which authorizes the City of Riverbank (“City”) and an individual with an interest in real property to enter a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, E & J Distributors LLC., a California limited liability corporation doing business as Terminal Infusion (“Terminal Infusion”) submitted an application to the City for consideration of a development agreement amendment to operate a cannabis infusion facility (the “Project”); and

WHEREAS, Terminal Infusion proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, Terminal Infusion has a lease agreement to occupy that certain real property located at 5729 Terminal Avenue proposed Suite 2 in the City of Riverbank, Assessor’s Parcel Number 075-020-016 on which Terminal Infusion intends to develop the Project; and

WHEREAS, City and Terminal Infusion seek to enter a development agreement for the Project (the “Development Agreement”) pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission held a duly noticed public hearing on March 16, 2021, to consider the Development Agreement amendment and by a vote of 5-0 recommended approval of the Development Agreement Amendment 06-2020 to the Council, and voted 5-0 to approve the Conditional Use Permit 03-2020, 5729 Terminal Avenue, Suite 2 (APN: 075-020-016); and

WHEREAS, on April 13, 2021, City Council held a duly noticed public hearing to consider this ordinance for the Development Agreement amendment and held a duly notice public meeting on April 27, 2021, to consider its adoption; and

WHEREAS, the existing Canna+Rise Development Agreement adopted by Ordinance 2019-005, effective 06/28/2019, was approved with a five-year term ending 06/28/2024; and

WHEREAS, the amendments to the existing development agreement is summarized as follows:

- The term of the agreement is for three (3) years and applies to both Canna+Rise (Suite 1) and Terminal Infusion (Suite 2). The term within Canna+Rise's previous DA is no longer relevant and the amendment will begin a new 3-year term for both Canna+Rise and terminal infusion with amended/new specifics within the development agreement.

- Terminal Infusion proposes the operation of a cannabis infusion facility (no extraction on site) for soft drinks and edibles.

- Terminal Infusion will pay to the City a Public Benefit of:

- Distribution of Third-Party Products - \$8,000 or two and a half percent (2.5%) of gross receipts (per month to be paid quarterly from operations every quarter), whichever is greater, due within 30 days from the end of the quarter;

- Distribution of Terminal Infusion Products – No Public Benefit Fee; and

- Manufacturing (infusion) - \$7,000 or three percent (3%) of gross receipts from operations, whichever is higher, (per month to be paid quarterly from operations every quarter), whichever is greater, due within 30 days from the end of the quarter.

WHEREAS, the City Council of the City, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.

2. In accordance with Government Code Section 65864 *et seq*, the City Council finds that the Development Agreement:

a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and

b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and

c. Will not adversely affect the orderly development of property or the preservation of property values; and

d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and

e. Contains a legal description of the property.

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

SECTION 1. The City Council of the City of Riverbank approves a Development Agreement amendment by and between E & J Distributors LLC., a California limited liability corporation doing business as Terminal Infusion, and the City of Riverbank for the development of the Project, and will be executed by the Mayor upon any final technical revisions as required and approved by the City Attorney.

SECTION 2. The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement; or as otherwise required pursuant to the terms of the Development Agreement.

SECTION 3. Notice of the public hearing on the proposed Development Agreement amendment was published in the Riverbank News, a newspaper of general circulation on March 31, 2021, and a notice of the public hearing on the

proposed Development Agreement amendment were mailed on March 31, 2021, to all interested parties and property owners within 300 feet of the property, according to the most recent Assessor's roll.

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). The Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be unconstitutional, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 6: This Ordinance shall become effective thirty (30) days from and after its final passage (05/28/2021), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading by title only and introduced at a regular meeting of the City Council of the City of Riverbank on 04/13/2021. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 27th day of April, 2021; motioned by Councilmember District 4 Darlene Barber-Martinez, seconded by Councilmember District 3 Cal Campbell; moved said ordinance by a City Council vote of 5-0:

AYES: **Councilmember District 4 Darlene Barber-Martinez,**
 Councilmember District 3 Cal Campbell
 Councilmember District 2 Rachel Hernandez

**Vice Mayor (CM-D1) Luis Uribe
Mayor Richard D. O'Brien**

**NAYS: None
ABSENT: None
ABSTAINED: None**

ATTEST:

APPROVED:

**Annabelle H. Aguilar, CMC
City Clerk**

**Richard D. O'Brien
Mayor**

APPROVED AS TO FORM:

Tom P. Hallinan, City Attorney



City of Riverbank
Office of the City Clerk / Elections

Certification of Ordinance No. 2021-001

State of California }
County of Stanislaus } SS:
City of Riverbank }

I, Annabelle H. Aguilar, duly appointed City Clerk of the City of Riverbank, California, Do Hereby Certify that the foregoing Ordinance No. 2021-001 (consisting of 6 pages) was introduced at a regular meeting of the City Council of the City of Riverbank, held on 04/13/2021, and thereafter had a second reading and was adopted at a regular meeting of the City Council of the City of Riverbank on 04/27/2021 by the following City Council vote of 5-0, to wit:

*Ayes: Councilmember District 4 Darlene Barber-Martinez
Councilmember District 3 Cal Campbell
Councilmember District 2 Rachel Hernandez
Vice Mayor Luis Uribe
Mayor Richard D. O'Brien*

Nays: None

Absent: None

Abstained: None

I Further Certify that the foregoing Ordinance No. 2021-001 was published pursuant to GC § 36933 as follows:

- First Summary published on 03/31/2021 in the Riverbank News; and*
- A letter was mailed to all property owners within 300 ft. on 03/31/2021.*
- Second Summary published on 05/05/2021 in the Riverbank News; and*
- Notices were also posted on the exterior Bulletin Boards of City Hall North and the Community Center.*

*Witness my hand and the Seal of the City of Riverbank,
affixed this 6th day of May, 2021.*

*Annabelle H. Aguilar, CMC
City Clerk*