

## EMERYVILLE PLANNING COMMISSION

### STAFF REPORT

**Agenda Date: December 8, 2016**

**Report Date: December 1, 2016**

**TO:** Emeryville Planning Commission

**FROM:** Community Development Department  
Miroo Desai, Senior Planner

**SUBJECT:** Cannabis Regulations (ORD16-002)

**PROPOSAL  
SUMMARY:**

Consideration of an amendment to the Planning Regulations in Title 9 of the Emeryville Municipal Code to add Article 21 to Chapter 5 concerning standards for cannabis-related activities and to make other related modifications to the Planning Regulations. These regulations would apply citywide.

**COMMISSION  
PROCEDURE:**

After taking public testimony on the proposed Resolution, the Planning Commission may take action to recommend or not recommend to the City Council adoption of the code amendments, with or without changes.

**ENVIRONMENTAL  
REVIEW:**

This proposal is exempt from environmental review under the “general rule” at State CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

**RECOMMENDED  
COMMISSION  
ACTION:**

1. Open the public hearing and take testimony on the proposed Resolution regarding amendments to the Planning Regulations.
2. Close the public hearing and consider the Staff Report and proposed Resolution.
3. Adopt the attached Resolution approving the proposed amendments to the Planning Regulations and recommending that the City Council adopt the amendments.

### **BACKGROUND**

On October 9, 2015, Governor Brown approved the Medical Cannabis Regulation and Safety Act (“MCRSA”), which was effective on January 1, 2016, and which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana. The MCRSA has specific provisions that allow local

***VII.D.***

governments to enact ordinances prohibiting marijuana cultivation, processing, delivery and dispensaries.

The City has prohibited activities related to cannabis<sup>1</sup> since 2006 (Emeryville Municipal Code Title 5, Chapter 28, “Marijuana”), and on January 19, 2016, the City Council adopted an urgency ordinance and introduced a regular ordinance re-affirming the City’s prohibition. At the January 19, 2016, meeting, the City Council also indicated that it would like to reconsider the status quo, and directed staff to return with a study session item to consider the regulation of medical marijuana.

On March 15, 2016, the City Council held a study session focusing on medical cannabis. The City Council provided direction to staff to prepare regulations that allow the following: personal cultivation of cannabis for patients or their primary caregivers; manufacturing and testing of medical cannabis and related products; and a dispensary for medical cannabis. The City Council direction for retail sale includes allowance of one dispensary in the City that would be selected via a Request for Proposals (RFP) process thereby giving the City Council an opportunity to review and select a viable vendor. The City Council was not interested in allowing for commercial cultivation of medical cannabis. In addition, the City Council directed staff to return on April 19, 2016, with an ordinance allowing dispensaries located outside of Emeryville to lawfully deliver medical cannabis to qualified patients or their primary caregiver located in Emeryville. The ordinance, which repealed and replaced EMC Title 5, Chapter 28 in its entirety, was passed on May 17, 2016 (Ordinance No. 16-004).

Since the City Council direction, Proposition 64, the Adult Use of Marijuana Act (“AUMA”), was passed on November 8, 2016. The AUMA is a voter initiative that allows cultivation, manufacturing and retail sale of cannabis and cannabis-related products for recreational purposes. The attached memorandum from the League of California Cities summarizes the AUMA and local regulatory options (see Attachment 1). Of relevance to the Planning Commission’s purview, Proposition 64 allows each residence to cultivate six plants of cannabis for personal use, subject to any reasonable local regulations. It allows local jurisdictions to prohibit commercial cannabis activity, e.g., to prohibit the land uses of cultivation, manufacturing, testing, distribution and retail sale. Although the City Council was aware that Proposition 64 would be on the November 2016 ballot at the time of its March 2016 study session, the City Council did not provide any explicit direction on regulations for recreational cannabis. Instead, the Council indicated only that they may be open to allowing recreational cannabis commercial activities if the proposition were to pass.

## **DISCUSSION**

Staff recommends that two types of permits be required for conducting cannabis related activities: 1) a land use permit; and 2) an operator’s permit. Accordingly, a new Article 21, entitled “Cannabis-Related Activities”, is proposed to be added to Chapter 5 of Title 9 (Planning Regulations) of the

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1. “Cannabis” is the botanical name for marijuana, and is now the preferred term. Therefore, the proposed regulations use the term cannabis instead of marijuana. References to marijuana are deemed to mean cannabis.

Municipal Code; and Chapter 28 of Title 5 (Public Welfare) is proposed to be repealed and replaced in its entirety to require the operator's permit. The land use permit is intended to mitigate against the potential land use impacts from cannabis activity, and the ordinance requiring the land use permit is the subject of the Planning Commission's action. The operator's permit is intended to insure that the commercial cannabis activity is not a front for illegal activity or otherwise presenting a threat to the public's health, safety and welfare. Although the operator's permit is not within the purview of the Planning Commission's jurisdiction, a draft of the proposed operator's permit ordinance is attached for the Commission's information (see Attachment 2). The operator's permit, similar to a cabaret permit, will be handled by the Police Department, which will look into the applicant's background and proposed security plan, among other things.

The ordinance amending the Planning Regulations is written to allow both medical and recreational cannabis land uses in the City because operational considerations and impacts do not vary for the two classifications. The Planning Commission should consider whether to recommend to the City Council to allow for commercial cannabis land uses for recreational purposes. If the Planning Commission's recommendation is to prohibit commercial cannabis land use for recreational purposes in the City as permitted by Proposition 64, then the draft Ordinance can be modified by inserting the word "medical" before the word "cannabis" throughout the document.

In order to help ensure that individuals and businesses engaged in cannabis-related activities will pose minimal impacts to the public health, safety and welfare, the proposed amendments to the Planning Regulations outline performance criteria for personal cultivation, whether for medical or recreational purposes; define and treat manufacturing of cannabis products similar to manufacturing of pharmaceutical products; and lay out the locational criteria for a dispensary or retailer, similar to the criteria for Tobacco Shops.

Below is a discussion of the proposed regulations with key highlights. The attached resolution provides the exact language that is proposed to be incorporated in the Planning Regulations.

#### Personal Cultivation (Including Processing for Personal Use)

Pursuant to State Law, these regulations would allow cultivation of no more than six cannabis plants by any individual that is 21 years or older for recreational purposes. For enforcement purposes, it will be difficult to distinguish between cultivation of cannabis for a qualified patient and personal cultivation allowed for recreational purposes. Therefore, staff recommends one cultivation standard that is consistent with both the City Council's direction and Proposition 64. Personal cultivation may occur in any zoning district provided that the activity is in compliance with the following:

- (1) Growing, processing, or transporting of cannabis plants for personal use must be in full compliance with all the applicable provisions of California law.
- (2) Cannabis plants shall be grown, possessed, and processed within the primary residence of the person growing, possessing and processing the cannabis plants for personal use. No more than six plants may be cultivated in a dwelling unit.

- (3) Cannabis plants shall not be grown or processed in the common areas of a multi-unit residential development nor in common areas of any commercial or industrial building.
- (4) Cannabis plant cultivation and processing shall not occur in any accessory structure.
- (5) Cultivation and processing of cannabis plants must occur within a building or a dwelling unit and must not be perceptible from the exterior of the building or dwelling unit including but not limited to: visual observation, including any form of signage; unusual odors, smells, fragrances, or other olfactory stimulus; light pollution, glare or brightness; and excessive noise from ventilation fans.
- (6) Cannabis growth and processing shall meet the requirements of all applicable building and life/safety codes, including requirements concerning electrical systems and ventilation systems.
- (7) Any use of a compressed flammable gas as a solvent or other volatile solvent in the extraction of THC or other cannabinoids for personal use is prohibited.

#### Manufacturing and Processing of Cannabis Products

Manufacturing and processing of cannabis and cannabis products such as extracts, concentrates, edible products, and topical products would have characteristics similar to the manufacturing of pharmaceuticals. Therefore, Cannabis Manufacturing would be allowed in the same zoning districts as Pharmaceutical Manufacturing, namely the Mixed Use with Non-Residential (MUN), Office/Technology Doyle Hollis North (OT/DH), Office/Technology (OT), Light Industrial (INL), and Heavy Industrial (INH) districts. However, because Cannabis Manufacturing would be classified as a “Use of Special Concern”, it would require a Major Conditional Use Permit from the Planning Commission in any of these zoning districts.

#### Retail Sale of Cannabis Products

This ordinance allows for retail cannabis sales with a Major Conditional Use Permit in the same locations where Tobacco Shops are allowed, i.e. in the Mixed Use with Residential (MUR), Mixed Use with Residential South (MURS) and Mixed Use with Non-Residential (MUN) zoning districts. In addition, any such use may not be located within 500 feet of any public parks, religious institutions, or elementary or secondary schools. The attached map indicates possible locations where an application to establish Cannabis Sales may be proposed (see Attachment 3).

The City Council has expressed interest in limiting the number of retail outlets. Accordingly, although the Planning Regulations allow for several different sites where cannabis retail could occur, the proposed ordinance to establish the Operator’s Permit provides that an Operator’s Permit issues at the City Council’s sole discretion, and may not issue until the City Council adopts a resolution providing for guidelines on the issuance of an Operator’s Permit for a retail cannabis activity. As noted above, the City Council direction for retail sale includes allowance of one dispensary in the City that would be selected via a Request for Proposals (RFP) process thereby giving the City Council an opportunity to review and select a viable vendor.

### Structure of Regulations

The new cannabis-related regulations would appear in various places within the Planning Regulations (Title 9 of the Emeryville Municipal Code). The personal cultivation standards, locational criteria for retail outlets and/or dispensaries, and definitions of key words such as manufacturing, dispensary, and testing laboratory, would be contained in the new Article 21 of Chapter 5, entitled “Cannabis-Related Activities”. In addition to the new Article 21, there would be five related modifications to the Planning Regulations, in Chapters 2 (“Use Classification”), 3 (“Zoning Districts”), and 5 (“Citywide Use and Development Regulations”). The first is to add a new use classification for “Cannabis Sales” as a retail use type in Section 9-2.353(i). The second modification is to add a new use classification for “Cannabis Manufacturing” as an Industrial use type in Section 9-2.417(f). The third is to add Cannabis Sales as a retail use and Cannabis Manufacturing as a manufacturing use under Uses of Special Concern (Sections 9-2.417 (i)(4) and 9-2.417 (m)(3), respectively). The fourth modification is to include Cannabis Sales and Cannabis Manufacturing as new use classifications in Table 9-3.202 that shows the zoning districts in which these uses are conditionally permitted or prohibited. And the fifth modification is deletion of the section prohibiting medical marijuana dispensaries (Section 9-5.207). Please see the attached resolution for exact language to be added and modified (Attachment 4).

### **ENVIRONMENTAL REVIEW**

The proposed ordinance is exempt from environmental review under State CEQA Guidelines Section 15061(b)(3), the “general rule” that CEQA does not apply to projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed Standards for Personal Cultivation would address any potential impacts of this accessory use.

### **REQUIRED FINDINGS:**

In order to approve an amendment to the Planning Regulations, the Planning Commission must be able to make the findings listed in the Amendment Procedure at Section 9-7.1305, as follows:

- (a) The proposed amendment is consistent with the General Plan.
- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.
- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

In staff's view, these findings can be made, as detailed in the attached draft resolution.

## **RECOMMENDATION**

1. Open the public hearing and take testimony on the proposed Resolution regarding amendments to the Planning Regulations.
2. Close the public hearing and consider the Staff Report and proposed Resolution.
3. Adopt the attached Resolution approving the proposed amendments to the Planning Regulations and recommending that the City Council adopt the amendments.

## Attachments

1. Memorandum from California League of Cities re: AUMA dated September 26, 2016
2. Draft Operator Permit Regulations
3. Map Showing Possible Locations for a Cannabis Dispensary
4. Draft Resolution



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## MEMORANDUM<sup>1</sup>

To: League of California Cities' City Managers Department  
League of California Cities' City Attorneys Department  
From: League Staff  
Date: September 26, 2016  
Re: The Control, Regulate and Tax Adult Use of Marijuana Act

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On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA" or "Act") will come before California voters as Proposition 64. If passed, the AUMA will legalize the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants. In addition, the AUMA will create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products. The regulatory system governing these commercial marijuana activities largely mirrors the Medical Marijuana Regulation and Safety Act ("MMRSA"), but there are key differences. This memorandum will provide an overview of the AUMA, highlight the ways in which the AUMA differs from the MMRSA, and identify the issues that cities will need to take action on if the AUMA passes.

### **I. Overview of the AUMA**

#### **A. Personal Nonmedical Marijuana Use**

The AUMA makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana, including as contained in marijuana products; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.<sup>2</sup> The AUMA requires that marijuana in excess of 28.5 grams that is produced by plants kept pursuant to the personal cultivation provision of the Act be kept in a locked space on the grounds of a private residence that is not visible from a public place.<sup>3</sup>

Although persons 21 years of age or older may use and possess nonmedical marijuana under the Act, their ability to engage in these activities is not unfettered. The AUMA prohibits the smoking

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<sup>1</sup> **DISCLAIMER:** These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

<sup>2</sup> Health & Saf. Code § 11362.2(a).

<sup>3</sup> Health & Saf. Code § 11362.2(a)(2).

of marijuana: (1) in any public place, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code section 26200; (2) where smoking tobacco is prohibited; (3) within 1,000 feet of a school, day care center, or youth center while children are present; and (3) while driving, or riding in the passenger seat of, any vehicle used for transportation.<sup>4</sup> Moreover, individuals cannot possess marijuana on school grounds, in day care centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating, or riding in any vehicle used for transportation.<sup>5</sup> The AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased, or occupied by the city, and that employers, including cities, may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the workplace.<sup>6</sup>

## **1. Personal Cultivation**

The AUMA provides that local governments can reasonably regulate, but cannot ban, personal indoor cultivation of up to six living marijuana plants within the person's private residence.<sup>7</sup> The Act defines private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit."<sup>8</sup> This includes cultivation in a greenhouse on the same property as the residence that is not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space.<sup>9</sup>

The AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations.<sup>10</sup> However, it purports to repeal any ordinance that bans outdoor cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.<sup>11</sup>

## **B. Commercial Nonmedical Marijuana Activity**

Under the AUMA, California will have a comprehensive state regulatory system for nonmedical marijuana that governs the industry from "seed to sale." The Bureau of Marijuana Control, currently the Bureau of Medical Cannabis Regulation, which is within the Department of Consumer Affairs, will have primary responsibility for administering and enforcing the AUMA.<sup>12</sup>

The AUMA divides state licensing and enforcement responsibilities among three agencies: (1) the Department of Consumer Affairs, which will issue licenses for marijuana the transportation,

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<sup>4</sup> Health & Saf. Code §§ 11362.3; 11362.4.

<sup>5</sup> Health & Saf. Code §§ 11362.3(3), 11362.3(4).

<sup>6</sup> Health & Saf. Code § 11362.45 (f)-(g).

<sup>7</sup> Health & Saf. Code §§ 11362.1(a)(3), 11362.2.

<sup>8</sup> Health & Saf. Code § 11362.2(5).

<sup>9</sup> Health & Saf. Code § 11362.2(a)(2).

<sup>10</sup> Health & Saf. Code § 11362.2(b)(3).

<sup>11</sup> Health & Saf. Code § 11362.2(b)(4).

<sup>12</sup> Bus. & Prof. Code § 26010.



storage, distribution, and sale of marijuana;<sup>13</sup> (2) the Department of Food and Agriculture will issue marijuana cultivation licenses, which will administer the provisions of the AUMA related to the cultivation of marijuana;<sup>14</sup> and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.<sup>15</sup> Each of these state licensing authorities is responsible for creating regulations governing their respective areas of responsibility, and must begin issuing licenses by January 1, 2018.<sup>16</sup>

A state marijuana license will be valid for one year.<sup>17</sup> A separate state license is required for each commercial marijuana business location.<sup>18</sup> With the exception of testing facilities, any person or entity licensed under the AUMA may apply for and be issued more than one type of state license.<sup>19</sup>

## **1. Local Control**

All nonmedical marijuana businesses must have a state license.<sup>20</sup> A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation.<sup>21</sup> However a state applicant need not provide documentation that the applicant has a local license or permit.

The AUMA does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.<sup>22</sup> Local jurisdictions may establish “standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed state standards.”<sup>23</sup>

## **2. Local Enforcement**

Like the MMRSA, the AUMA establishes a dual enforcement scheme for commercial marijuana activities that violate either state or local laws. The state licensing authorities will enforce state statutes and regulations. State authorities can suspend or revoke state licenses,<sup>24</sup> pursue civil penalties against violating businesses in an amount equal to three times the applicable licensing fee per violation,<sup>25</sup> or may prosecute violators criminally.<sup>26</sup> Local authorities will be responsible

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<sup>13</sup> Bus. & Prof. Code § 26012(a)(1).

<sup>14</sup> Bus. & Prof. Code § 26012(a)(2).

<sup>15</sup> Bus. & Prof. Code § 26012(3).

<sup>16</sup> Bus. & Prof. Code §§ 26012(c), 26013 (a).

<sup>17</sup> Bus. & Prof. Code § 26050(c).

<sup>18</sup> Bus. & Prof. Code § 26055(c).

<sup>19</sup> Bus. & Prof. Code § 26053.

<sup>20</sup> Bus. & Prof. Code § 26038.)

<sup>21</sup> Bus. & Prof. Code § 26055(e).

<sup>22</sup> Bus. & Prof. Code § 26200(a). But see, Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c) [prohibiting cities from preventing the use of public roads to lawfully transport or deliver nonmedical marijuana].

<sup>23</sup> Bus. & Prof. Code § 26201.

<sup>24</sup> Bus. & Prof. Code § 2603.

<sup>25</sup> Bus. & Prof. Code § 26038(a)

<sup>26</sup> Bus. & Prof. Code § 26038(c).

for enforcing local ordinances and regulations.<sup>27</sup> For state-licensed facilities operating within a city, a city may have authority to enforce state law and regulations “if delegated the power to do so by the [B]ureau [of Marijuana Control] or a licensing authority.”<sup>28</sup>

## **II. Key Differences Between the AUMA and MMRSA**

### **A. Licensing**

The MMRSA established dual licensing of medical marijuana businesses, requiring both local approval and a state license in order for a business to operate legally.<sup>29</sup> Specifically, the MMRSA requires applicants to provide the relevant state licensing entity with documentation proving their compliance with local ordinances and regulations.<sup>30</sup>

The AUMA does not require an applicant to provide evidence of local permission prior to being issued a state license.<sup>31</sup> Instead, the AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.<sup>32</sup> Thus, state licensing officials bear the onus of evaluating local regulatory compliance.

Under this system, the AUMA allows a nonmedical marijuana business licensed by the state to operate within city limits unless the city’s municipal code prohibits the use. Cities that wish to regulate or prohibit nonmedical marijuana businesses will need to do so before the State begins issuing licenses, either by enacting a nonmedical marijuana ordinance/regulation or by amending an existing medical marijuana ordinance/regulation to include nonmedical marijuana within its scope.

### **B. License Revocation**

Under the MMRSA, revocation of a local license or permit unilaterally terminates the ability of the medical marijuana business to operate in the jurisdiction issuing the permit, until such time as the local permitting entity reinstates it.<sup>33</sup>

Under the AUMA, if a local jurisdiction revokes a local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction, the Bureau of Marijuana Control must initiate proceedings to determine whether the state license issued should be suspended or revoked within ten days of being notified by the local jurisdiction of the local revocation.<sup>34</sup> Note, however, that, even if the state license is not suspended or revoked immediately, the business cannot operate within the local jurisdiction once local revocation occurs.

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<sup>27</sup> Bus. & Prof. Code § 26200 (b).

<sup>28</sup> Bus. & Prof. Code § 23202(a).

<sup>29</sup> Bus. & Prof. Code § 19320(b).

<sup>30</sup> Bus. & Prof. Code § 19322(a).

<sup>31</sup> Bus. & Prof. Code § 26056.

<sup>32</sup> Bus. & Prof. Code § 26055(e).

<sup>33</sup> Bus. & Prof. Code § 19320(d).

<sup>34</sup> Bus. & Prof. Code § 26200(c).

### **C. Personal, Indoor Cultivation**

Under the MMRSA, local governments possess the power to regulate and completely ban personal, indoor cultivation.<sup>35</sup> Under the AUMA local governments can “reasonably regulate” indoor cultivation of up to six marijuana plants for personal use, but cannot ban it.<sup>36</sup>

### **D. Personal Outdoor Cultivation**

Under the MMRSA local governments can prohibit all outdoor cultivation. Under the AUMA local governments can prohibit all outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law.<sup>37</sup> Upon such determination, the AUMA purports to repeal all local bans on outdoor cultivation.<sup>38</sup>

### **E. Amendment**

Any portion of the MMRSA can be amended at any time, if there is sufficient political support within the Legislature for making substantive changes to the regulatory structure. Under some circumstances, an amendment to the MMRSA by the Legislature might arguably violate The Compassionate Use Act of 1996 (adopted by the voters as Proposition 215), which decriminalized the personal use of medical marijuana.<sup>39</sup>

Under the AUMA, the Legislature may amend Sections 5 (relating to the use of medical marijuana for medical purposes) and 6 (relating to state licensing) and the provisions relating to penalties by majority vote. The Legislature may amend any other provision of the Act by a 2/3 vote. Any amendment must further the purposes and intent of the AUMA. The purpose and intent of the Act include allowing local governments to ban nonmedical marijuana businesses.

### **F. Taxation**

The AUMA imposes new state taxes on medical and nonmedical marijuana in the following manner:

- Effective January 1, 2018, the AUMA imposes an excise tax at the rate of 15% of gross retail sales receipts.<sup>40</sup>
  - This tax will be in addition to existing state and local sales tax.<sup>41</sup> Given that state and local sales taxes can range from 7-10%, the combined excise tax + sales tax at the retail level could approach 25%;

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<sup>35</sup> Health & Saf. Code § 11362.777(g); *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984; *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 969-970.

<sup>36</sup> Bus. & Prof. Code § 11362.2(b)(1).

<sup>37</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>38</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>39</sup> Health & Saf. Code § 11362.5.

<sup>40</sup> Rev. & Tax Code § 34011(a).

- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:<sup>42</sup>
  - \$9.25 per dry-weight ounce on all marijuana flowers;
  - \$2.75 per dry-weight ounce on all marijuana leaves;
- The AUMA prohibits imposition of state and local sales taxes on medical marijuana.<sup>43</sup>
- The AUMA exempts marijuana cultivated for personal use from taxation.<sup>44</sup>

The AUMA does not pre-empt local taxation.<sup>45</sup> However, the AUMA's estimated cumulative tax rate of nearly 35% on the purchase of nonmedical marijuana has potentially troubling implications for local governments. A high state tax rate by itself may depress sales and stimulate the black market. Any local taxation of marijuana should be governed by an awareness that a high retail sales tax rate, imposed on an industry that, until recently, has not been regulated at all, might stimulate black market activity and compromise the anticipated yield of revenue. In order to avoid such a result, cities might consider imposing an excise tax on discrete commercial nonmedical marijuana activities rather than on retail sales. New taxes on marijuana require compliance with Proposition 218.

## 1. Allocation of State Tax Revenues

After repaying certain state agencies for marijuana regulatory costs not covered by license fees, and making certain grants to universities for research and development and the Governor's Office of Business and Economic Development, the AUMA distributes the remaining tax revenue as follows:

- 60% for youth programs, substance abuse education, prevention and treatment;
- 20% for environmental cleanup and remediation; and
- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts resulting from marijuana legalization

## G. Deliveries

Under the MMRSA, medical marijuana deliveries can only be made from a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance.<sup>46</sup> A delivery person must carry a copy of the dispensary's state-issued license, a government ID, and a copy of the delivery request.<sup>47</sup> The patient or caregiver requesting the delivery must also maintain a copy of the delivery request.<sup>48</sup> Dispensaries and delivery people who comply with MMRSA are immune from prosecution for marijuana transportation.<sup>49</sup>

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<sup>41</sup> Rev. & Tax Code § 34011(d).

<sup>42</sup> Rev. & Tax Code § 34012.

<sup>43</sup> Rev. & Tax Code § 34011(g).

<sup>44</sup> Rev. & Tax Code § 34012(j).

<sup>45</sup> Rev. & Tax Code § 34021.

<sup>46</sup> Bus. & Prof. Code § 19340(a).

<sup>47</sup> Bus. & Prof. Code §§ 19340(b)(2), 19340(d).

<sup>48</sup> Bus. & Prof. Code § 19340(e).

<sup>49</sup> Bus. & Prof. Code § 19317(f).

Under the AUMA, deliveries can be made by a state-licensed retailer, microbusiness, or nonprofit unless they are prohibited by local ordinance.<sup>50</sup> Although the AUMA does require a customer requesting delivery to maintain a copy of the delivery request, there is no express requirement that delivery people carry or maintain any records.<sup>51</sup> Moreover, unlike the MMRSA, the AUMA does not require that deliveries come *from* a dispensary. Instead, it states that “Deliveries, as defined in this division, may only be made *by* a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.”<sup>52</sup> Thus, there is at least some question regarding whether deliveries may be made from non-retail locations by retail employees.

Under both the MMRSA and the AUMA, local jurisdictions can ban or regulate deliveries within their borders.<sup>53</sup> However, local jurisdictions cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries.<sup>54</sup>

### **III. Local Regulatory Options**<sup>55</sup>

The AUMA preserves the authority of a city to adopt business regulations and land use regulations for nonmedical marijuana activities.<sup>56</sup>

#### **A. Personal Marijuana Cultivation**

Under the AUMA local governments can regulate or ban all personal, outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law. In addition, local governments can “reasonably regulate,” **but cannot ban**, personal, indoor cultivation. Nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date. However, assuming that the AUMA passes, if a city does not have a ban or regulatory scheme governing personal, outdoor cultivation or a regulatory scheme governing personal, indoor cultivation in place before November 9, 2016, a person may legally engage in personal cultivation of up to six marijuana plants at his or her private residence.

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<sup>50</sup> Bus. & Prof. Code §26090(a).

<sup>51</sup> Bus. & Prof. Code §26090(b).

<sup>52</sup> Bus. & Prof. Code § 26090(a).

<sup>53</sup> Bus. & Prof. Code §§ 19340(a), 19316(a), 26200.

<sup>54</sup> Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c).

<sup>55</sup> For a thorough discussion of the various marijuana regulatory options that a city may consider, see McEwen, *Medical Marijuana-Revisited After New State Laws* (Spring 2016) <<http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Spring-2016/5-2016-Spring-Medical-Marijuana-%E2%80%93Revisited-After>>. In addition, sample ordinances may be found on the League’s website, at: <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Medical-Marijuana>. **But note:** the regulatory schemes discussed in the McEwen paper and posted on the League’s website pertain to medical marijuana businesses under the MMRSA and may need to be modified to comply with the requirements of the AUMA.

<sup>56</sup> Health & Saf. Code § 11362.2; Bus. & Prof. Code §§ 26201, 26200(a).

## **B. Nonmedical Marijuana Businesses**

The AUMA recognizes a range of businesses, including dispensaries, cultivators, manufacturers, distributors, transporters, and testing laboratories. Cities may expressly ban, adopt business regulations, or adopt land use regulations pertaining to any or all of these businesses.

Again, the AUMA does not require a city to enact a regulatory scheme or ban by a certain date. However, assuming that the AUMA passes in November, if a city wishes to regulate or ban marijuana businesses before marijuana businesses may legally operate within the city, the regulations or ban will need to take effect before the state begins issuing nonmedical marijuana business licenses. The League anticipates that cities have until January 1, 2018 to enact bans or regulations relating to nonmedical marijuana businesses, because: (1) nonmedical marijuana businesses cannot operate in any city without a state license;<sup>57</sup> (2) the state licensing agencies in charge of implementing the AUMA have stated that they anticipate that they will not begin issuing licenses under the MMRSA until January 2018, and it is unlikely that said agencies will be able to begin issuing licenses under the AUMA before they begin issuing licenses under the MMRSA; and (3) the AUMA does not require state agencies to issue licenses until January 1, 2018.<sup>58</sup> It is not the League's position that state licensing agencies cannot issue licenses before January 1, 2018, just that it is unlikely that they will do so.

## **C. Caution Against Use of Permissive Zoning**

Under a permissive zoning code, any use not enumerated in the code is presumptively prohibited, unless an authorized city official finds that the proposed use is substantially the same in character and intensity as those land uses listed in the code.<sup>59</sup> Although the MMRSA upheld a city's authority to rely on permissive zoning to prohibit medical marijuana land uses, it is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning under the AUMA. This is so because: (1) the statutory language in the AUMA regarding local control seems to anticipate that a city will adopt an ordinance explicitly prohibiting and/or regulating nonmedical marijuana businesses (rather than relying on the silence of its Code to argue for a prohibited use);<sup>60</sup> (2) the AUMA does not contain the same protective language as the

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<sup>57</sup> Bus. & Prof. Code § 26038.

<sup>58</sup> Bus. & Prof. Code § 26012 (c).

<sup>59</sup> See *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433-436. See also *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 871 [holding that "medical marijuana dispensaries and pharmacies are not 'similarly situated' for public health and safety purposes"]; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [holding that a medical marijuana dispensary was not substantially similar to the listed commercial use classifications for personal services, retail sales, pharmacies and medical supplies]; *County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, 1205 [holding that a medical marijuana collective did not qualify as an "agricultural" land use because "marijuana is a controlled substance and is not treated as a mere crop or horticultural product under the law"].

<sup>60</sup> Bus. & Prof. Code § 26200 ["Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to *adopt* and *enforce* local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related

MMRSA with respect to permissive zoning;<sup>61</sup> and (3) the AUMA explicitly designates nonmedical marijuana as an agricultural product—thus if a city’s permissive zoning code authorizes agricultural uses, the city may be precluded from arguing that marijuana is prohibited.<sup>62</sup> Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

#### **IV. What actions need to be taken?**

At this time city officials should: (1) review the city’s municipal code; (2) consider whether they wish to regulate the personal cultivation of nonmedical marijuana indoors; (3) consider whether they wish to regulate or ban the personal cultivation of nonmedical marijuana outdoors; (4) consider whether they wish to enact business regulations of nonmedical marijuana businesses; (5) consider whether they wish to enact land use regulations of nonmedical marijuana businesses; (6) consider whether they wish to enact local taxes on marijuana; and (7) comply with Proposition 218 if they decide to enact local taxes on marijuana.

Cities should prioritize considering or enacting ordinances regulating personal nonmedical marijuana cultivation, because it will be legal under state law on November 9, 2016 if the AUMA passes, whereas nonmedical marijuana businesses will not be able to operate lawfully until the state licensing system becomes operational (likely in late 2017). **Although cultivation for personal use will be legal as of November 9, 2016 if the AUMA is approved by voters, local governments will not lose any regulatory authority if they do not have an ordinance in place addressing personal cultivation before the election. Locals will retain the ability to regulate personal cultivation and to enact related ordinances at any time after the election. The only change the AUMA will make in this area is to prohibit local bans of indoor cultivation for personal use. No ordinance enacted prior to the election can prevent this change in the law.**

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to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”] (emphasis added).

<sup>61</sup> Compare Health & Saf. Code § 11362.777(b)(3) [a “person or entity shall not submit an application for a state license . . . if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning”] with Bus. & Prof Code § 26205(e) [“Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.”].

<sup>62</sup> Bus. & Prof. Code § 26067(a).

## **ORDINANCE NO. 17-**

### **An Ordinance Of The City Council Of The City Of Emeryville Repealing, Replacing, And Retitling Chapter 28 Of Title 5 Of The Emeryville Municipal Code, "Cannabis" CEQA Determination: Exempt Pursuant To Section 15061(B)(3) Of The California CEQA Guidelines**

**WHEREAS**, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law, and as recognized by the Medical Cannabis Regulation and Safety Act (MCRSA) and Adult Use of Marijuana Act (AUMA), to protect the health, safety, and welfare of the public; now, therefore

**THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

#### **SECTION ONE. REPEALING AND REPLACING CHAPTER 28 OF TITLE 5 TO THE EMERYVILLE MUNICIPAL CODE IN ITS ENTIRETY**

Chapter 28 of Title 5 of the Emeryville Municipal Code, entitled "Marijuana", is hereby repealed in its entirety, retitled "Cannabis", and replaced with the following:

#### **CHAPTER 28 CANNABIS**

##### **5-28.01 Findings.**

- (a) The Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess cannabis, and accordingly, medical cannabis dispensaries are illegal under federal law;
- (b) In 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act as it related to cannabis, indicating that enforcement would not be a priority in states and local jurisdictions that have laws authorizing cannabis-related conduct; that have implemented strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests; and that have provided the necessary resources to demonstrate the willingness to enforce their laws and regulations;
- (c) In 2015, Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical cannabis;
- (d) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq., "The Compassionate Use Act of 1996");



the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to obtain and use it without fear of State criminal prosecution;

- (e) On October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), effective on January 1, 2016, which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of medical cannabis;
- (f) The voters of the State of California approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of recreational cannabis;
- (g) The City Council of the City of Emeryville has recognized, and continues to recognize, the potential adverse impacts on the health, safety, and welfare of its residents and business from secondary effects associated with Commercial Cannabis Activity, which include, offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, increased crime in about the dispensary, robberies of customers, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents;
- (h) There is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from Commercial Cannabis Activity;
- (i) The MCRSA and AUMA set forth a comprehensive framework to regulate Cannabis and Cannabis products from seed to ingestion by a consumer, which includes uniform health and safety standards designed to implement quality control, a labeling and a track-and-trace program, and other consumer protections, which mitigates against some of the potential adverse impacts identified by the City Council in the past;
- (j) Neighboring local jurisdictions that allow Commercial Cannabis Activity for medical purposes have implemented effective regulatory and enforcement systems that address the adverse impacts that could pose a threat to public safety, health, and welfare;

- (k) An effective regulatory system governing Cannabis in the City of Emeryville, as provided in this Chapter, will address potential adverse impacts to the public health, welfare, and safety, thereby allowing Commercial Cannabis Activity and other use of Cannabis and Cannabis Products consistent with federal law as applicable to the State of California and State law.

#### **5-28.02 Purpose and Intent.**

It is the purpose and intent of this Chapter for the City Council to exercise its police powers derived from Section 7 of Article XI of the California Constitution and state law to promote the health, safety, and general welfare of the residents and businesses of the City of Emeryville by regulating Cannabis within the City's jurisdictional limits, unless preempted by federal or state law.

#### **5-28.03 Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- (a) "AUMA" refers to the California state law entitled "Control, Regulate and Tax Adult Use of Marijuana Act of 2016", also known as Proposition 64, and any regulations promulgated thereunder.
- (b) "Cannabis" includes marijuana and means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include industrial hemp, as defined in Health and Safety section 11018.5.
- (c) "Cannabis Business" means a business or enterprise engaged in Commercial Cannabis Activity.
- (d) "Cannabis Business Owner" means any of the following:
  - (1) Each person or entity having an ownership interest in the Commercial Cannabis Business other than a security interest, lien, or encumbrance on property that will be used by the Commercial Cannabis Business;
  - (2) If the Commercial Cannabis Business is a publicly traded company, the chief executive officer or any person or entity with an aggregate ownership interest of five percent (5%) or more; or
  - (3) Each person who participates in the direction, control, or management of, or has a financial interest in, the Commercial Cannabis Business.

- (e) "Cannabis Product" means marijuana or Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or an edible or topical product containing cannabis, or marijuana and other ingredients.
- (f) "Commercial Cannabis Activity" includes possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of Cannabis or Cannabis products for commercial purposes, whether for profit or non-profit. It excludes Cultivation.
- (g) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of Cannabis.
- (h) "MCRSA" refers to the California state law entitled Medical Cannabis Regulation and Safety Act and regulations promulgated by thereunder.
- (i) "Permit" refers to any one of the permits described in Section 5-28.04 of this Chapter.
- (j) "Primary caregiver" shall have the same meaning as set forth in California Business and Professions Code section 19300.5(h), as that section now appears, or may hereafter be amended or renumbered.
- (k) "Qualified patient" means a patient that uses or ingests medical cannabis as that term is defined in California Business and Professions Code section 19300.5(ag) and who is entitled to the protections of California Health and Safety Code section 11362.5.

#### **5-28.04 Permit Requirement; Exemptions from Permit Requirement**

- (a) Each Cannabis Business seeking to operate within the City must first apply and be issued the appropriate Permit to operate within the City. The Permit is specific to the location where the Commercial Cannabis Activity Business will be operating. Multiple operating locations for the same Cannabis Business will require separate Permits.
- (b) A Cannabis Business may apply for any of the following:
  - (1) Manufacturer Permit 1: A Manufacturer Permit 1 is required for all activities for which either the MCRSA or AUMA requires a Type 6 License.
  - (2) Manufacturer Permit 2: A Manufacturer Permit 2 is required for all activities for which either the MCRSA or AUMA requires a Type 7 License.

- (3) Testing Laboratory Permit: A Testing Laboratory Permit is required for all activities for which either the MCRSA or AUMA requires a Type 7 License.
  - (4) Dispensary/Retailer Permit: A Dispensary Retailer Permit is required for all activities for which either the MCRSA or AUMA requires a Type 10 or 10A License.
  - (5) Distributor Permit: A Distributor Permit is required for all activities for which either the MCRSA or AUMA requires a Type 11 License.
  - (6) Transporter Permit: A Transporter Permit is required for all activities for which the MCRSA requires a Type 12 License and/or for transfers of Cannabis or Cannabis Product from the permitted business location of one licensee in the City, for the purposes of conducting Commercial Cannabis Activity.
  - (7) Delivery Permit: A Delivery Permit is required for licensed dispensaries, retailers, microbusinesses or a nonprofit allowed under Business and Professions Code section 26070.5 located outside of the City to deliver to individuals located within the City.
  - (8) No permit shall issue if the Cannabis Activity is not a permitted land use in the City.
- (c) The following activities are allowed and do not require any permit under this chapter, provided the activity does not constitute Commercial Cannabis Activity and complies with other state and local laws:
- (1) Possessing, processing, transporting, purchasing, obtaining or giving away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of Cannabis not in the form of concentrated Cannabis.
  - (2) Possessing, processing, transporting, purchasing, obtaining or giving away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of Cannabis in the form of concentrated Cannabis, including as contained in Cannabis Products.
  - (3) Possessing, planting, cultivating, harvesting, drying or processing of not more than six living Cannabis plants, provided such activity complies with Chapter 21 of Title 9 of the Emeryville Municipal Code, and is not used in any Commercial Cannabis Activity, which would require a Permit.

- (4) The smoking of Cannabis and Cannabis Products, provided smoking is not prohibited under state law or Chapter 29 of Title 5 of the Emeryville Municipal Code.
  - (5) The ingestion of Cannabis or Cannabis Products.
  - (6) Primary caregiver, who is not subject to licensing requirements of the MCRSA, engaged in the delivery of Cannabis or Cannabis Product to a Qualified Patient.
- (d) Excepted as provided herein, all other Cannabis activities, which includes Cultivation for commercial purposes, are prohibited.

#### **5-28.05 Permit Applications**

The form and content of the application for a Permit shall be specified by the Chief of Police and shall include the following minimum information, as applicable to the Permit type:

- (a) Identifying Information for Ownership and Management. The name and address for each Commercial Cannabis Activity Business Owner and an explanation of the legal form of business ownership, for example, sole proprietor, partnership, California corporation, etc.
- (b) Additional Identifying Information, Owners and Key Employees: Each Cannabis Business Owner, as well as each employee who makes or will make operational or management decisions that directly impact the business, shall submit electronic fingerprint images and related information required by the Police Chief for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests to be considered as set forth in this Chapter.
- (c) Description of Premises. The address and Assessor's Parcel Number(s) of the location for the proposed Commercial Cannabis Activity; and the name and contact information for the property owner(s) where the proposed Commercial Cannabis Activity will be located.
- (d) State License Type and Compliance. A description of the specific state Cannabis License(s) that the Cannabis Business either has obtained, or plans to obtain. The Cannabis Business shall describe how it will meet the state licensing requirements, and provide supporting documentation as required by the Police Chief.
- (e) Other Local Licenses. A description of the specific Cannabis license or permits that the applicant either has obtained, or plans to obtain from other local jurisdictions.

- (f) Description of Operations. A description of the nature of the proposed Commercial Cannabis Activity, product type, average production amounts (including each product produced by type, amount, process and rate) and source(s) of Cannabis.
- (g) Security Plan. A description and documentation of how the applicant will secure the premises 24 hours per day, 7 days per week, and how waste derived from any Cannabis Commercial Activity will be disposed of in a manner to ensure it may not be utilized for unlawful purposes. The security plan shall include, but is not limited to, the following:
  - (1) Preventing individuals from remaining on the premises if they are not engaged in activity expressly related to the operations of the Cannabis Activity;
  - (2) Establishing limited access areas accessible only to authorized personnel including security measures to both deter and prevent unauthorized entrance into areas containing Cannabis or Cannabis products and theft of Cannabis or Cannabis Products;
  - (3) Storing all finished Cannabis and Cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, immediate sale, if applicable;
  - (4) Providing tamper proof and tamper evident packaging for finished Cannabis product;
  - (5) Preventing off site impacts to adjoining or near properties; and
  - (6) Limiting the amount of cash on the premises.
- (h) Tracking System. A description of how the Cannabis Business will track inventory of Cannabis product from seed to sale.
- (i) For Cannabis Businesses applying for or a Delivery Permit:
  - (1) Listing of all vehicles and devices to be used for delivery of Cannabis or Cannabis Product within the City, which includes the vehicle's make, model, year, license plate number and vehicle identification number.
  - (2) Identifying all persons who will deliver Cannabis or Cannabis Product in the City. Such individuals must be at least 21 years of age at the time of submittal of the application.

- (3) Copies of applicable authorizing state and local licenses and permits issued to Cannabis Business allowing it to engage in Commercial Cannabis Activity outside of the City.
- (j) Certificate of insurance demonstrating ability to comply with the insurance requirements as required for the applicable permit in a form acceptable to the City Attorney.
- (k) Signature of Applicant and Property Owner. The application shall be signed by each Cannabis Business Owner under the penalty of perjury, certifying that the information submitted, including all supporting documents, is to the best of the applicant's knowledge and belief, true, accurate and complete, and by the property owner for purposes of certifying that s/he has reviewed the application, and approves the use of the property for the purposes stated in the application. The signature of both the Cannabis Business Owner and the property owner shall constitute evidence of their express consent to allow any City official or employee to enter upon and inspect the premises upon reasonable notice.
- (l) The information required by this Section shall be confidential, and shall not be subject to public inspection or disclosure except as may be required by federal, state or local law. Disclosure of information pursuant to this Section shall not be deemed a waiver of confidentiality by the applicant or any individual named in the application. The City shall incur no liability for the inadvertent or negligent disclosure of such information.

#### **5-28.06 Review of Applications; Appeal of Disapprovals and Suspensions**

- (a) Review of Application. The Police Chief shall consider the application, and the results from any investigation into the application as deemed necessary by the Police Chief.
- (b) Disapproval of Application. If the Police Chief disapproves an application, he or she shall notify the applicant in writing, stating the reasons for the disapproval. Notification of disapproval shall be delivered by first class mail to the applicant. No permit shall issue unless a successful appeal of the disapproval is made within the requisite time frame.
- (c) Appeal of Disapproval:
  - (1) Within 15 days after the Police Chief serves notification of disapproval, an applicant may appeal the disapproval by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
  - (2) The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within 30 days after the receipt of the applicant's appeal, unless

the City and the applicant agree to a longer time, to consider the appeal. The City Clerk shall provide notice of the date, time and place of hearing, at least 7 days prior to the date of the hearing.

- (3) The City Manager shall appoint a Hearing Officer to hear the appeal and determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant and the Police Chief shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
  - (4) The Hearing Officer shall issue a written decision within 15 days after the close of the hearing. The decision of the Hearing Officer shall be final.
- (d) Grounds for Denial, Revocation or Suspension of Permit. The granting of a Permit or a renewal thereof may be denied and an existing Permit revoked or suspended if:
- (1) The Cannabis Business Owner has knowingly made a false statement in the application or in any reports or other documents furnished to the City.
  - (2) The Cannabis Business Owner has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the Cannabis Business for which the application is made, which includes but is not limited to:
    - a. A violent felony conviction, as specified in Penal Code section 667.5(c)
    - b. A serious felony conviction, as specified in Penal Code section 1192.7
    - c. A felony conviction involving fraud, deceit or embezzlement
    - d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor



- (3) The Cannabis Business or a Cannabis Business Owner has been sanctioned by a licensing authority or other city or county for unauthorized Commercial Cannabis Activity.
  - (4) The granting or renewing of the Permit would perpetuate or encourage any of the following:
    - a. Distribution of Cannabis or Cannabis Products to minors;
    - b. Generation of revenue from the sale of Cannabis or Cannabis Products to fund criminal enterprises, gangs and cartels;
    - c. Diversion of Cannabis or Cannabis Products to jurisdictions outside of the State where Cannabis and Cannabis Products are unlawful under state or local law;
    - d. Trafficking of other illegal drugs or facilitation of other illegal activity;
    - e. Violence and the use of firearms in the cultivation and distribution of Cannabis and Cannabis products;
    - f. The use of public lands in the cultivation of Cannabis; or
    - g. The use of federal property for Commercial Cannabis Activity.
  - (5) For any other reason that would allow the state to deny a license under either the MCRSA or AUMA.
  - (6) Fails to pay required City fees and taxes.
  - (7) Violates any provision of the MCRSA, AUMA, this Chapter or any other permits issued by the City for the Cannabis Activity, such as a conditional use permit.
- (e) Suspension and Revocation.
- (1) If the Police Chief deems continuation of the operation of delivery by the cannabis dispensary will cause a significant threat to the health, safety or welfare of the public, the Police Chief may suspend the Permit and all rights and privileges thereunder until a Hearing Officer renders a written decision on the revocation of the Permit.
  - (2) The Police Chief shall give notice to the Cannabis Business of his or her intent to revoke a Permit in the same manner as notice of disapproval and provide the City Clerk with a copy of the notice.

- (3) The hearing for the revocation of the Permit shall be set and conducted in the same manner as an appeal of disapproval. The decision of the Hearing Officer shall be final.

#### **5-28.07 Permit Issuance**

- (a) Before issuing any Permit, except for a Dispensary/Retailer Permit, the Police Chief shall determine that all of the following requirements have been met:
  - (1) The application is complete and all applicable City taxes and fees have been paid.
  - (2) All land use permits have been approved and all conditions of approval have been met or in good standing.
  - (3) There are no outstanding notices of nuisance or other unresolved code compliance issue at the site of the Commercial Cannabis Activity.
- (b) For a Dispensary/Retailer Permit, the City Council may adopt by resolution regulations governing issuance of a Dispensary/Retailer Permit. Until the City Council adopts such a resolution, no Dispensary/Retailer Permit shall issue.

#### **5-28.08 Permit Term**

- (a) The Permit shall be valid for one year from the date of issuance.
- (b) A Permit renewal application and any applicable fees must be submitted at least sixty (60) days before the expiration of the Permit. Failure to submit a renewal application prior to the expiration date of the permit will result in the automatic expiration of the Permit on the expiration date. Permit renewal is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that the new standards are met. No person shall have any entitlement or vested right to receive a Permit under this Chapter.

#### **5-28.09 Transfer of Permit or Modifications to Permit**

- (a) A Permit is non-transferable to another location, and no transfer to another Cannabis Business Owner or modifications to a permitted facility may be made except in accordance this section.
- (b) A request for change in Permit ownership shall be submitted the Police Chief on a City form at least sixty (60) days prior to the anticipated transfer, together with any applicable fee(s). Requests submitted in less than sixty (60) days before the

transfer will be process only in the City's discretion and may be subject to an expedited processing fee. A new Owner(s) shall meet all requirements for applicants of an initial Permit. The request shall include the following information:

- (1) Identifying information for the new Cannabis Business Owner(s) and management as required in an initial Permit application;
  - (2) A written certification by the new Cannabis Business Owner in accordance as required in an initial Permit application;
  - (3) The specific date on which the transfer is to occur; and
  - (4) Acknowledgement of full responsibility for complying with the existing Permit.
- (c) Change in security plan. A request to modify the security plan shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- (d) Change of Contact Information. A request for change in Cannabis Business contact information shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- (e) Change in Trade Name. A request for change in Cannabis Business trade or business name shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- (f) A Permit renewal application and any applicable fees must be submitted at least sixty (60) days before the expiration of the Permit. Failure to submit a renewal application prior to the expiration date of the permit will result in the automatic expiration of the Permit on the expiration date. Permit renewal is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that the new standards are met. No person shall have any entitlement or vested right to receive a Permit under this Chapter.

#### **5.28-10 General Conditions for All Permits**

- (a) State License. Beginning at such time that the State has begun to issue licenses and at all times thereafter, Cannabis Business shall hold a valid State license for the equivalent State license type.
- (b) Hours of Operation. All permitted facilities shall be closed to the general public and Transporter deliveries and pick-ups shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m. With the exception of activities authorized pursuant to a

Dispensary/Retailer Permit, no direct sales of Cannabis or Cannabis Product to the general public may occur upon the premises.

- (c) **Odor Control.** Odors shall be contained on the property on which the Commercial Cannabis Activity is located. If the City receives any odor complaints, the Cannabis Business shall work with the Building Official to correct odor concerns. Unresolved or repeated odor complaints may be basis for suspension or revocation of the Permit or denial of Permit renewal.
- (d) **Business Conducted Within Building.** No production, distribution, storage, display or wholesale of cannabis and cannabis-infused products shall be visible from the exterior of the building where the Commercial Cannabis Activity is being conducted.
- (e) **Security Measures.** All Cannabis Businesses shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system.
- (f) **Security Breach.** A Cannabis Business shall notify the Police Department within 24 hours after discovering any of the following:
  - (1) Diversion, theft, loss, or any criminal activity involving the Cannabis or Cannabis Product or any agent or employee of the permittee.
  - (2) The loss or unauthorized alteration of records related to Cannabis or Cannabis Product, registered Qualifying Patients, Primary Caregivers or employees or agents.
  - (3) Significant discrepancies identified during inventory.
  - (4) Any other material breach of security.
- (g) **Labeling.** Labels and packages of Cannabis and Cannabis products shall meet all state and federal labeling requirements. Until such regulations are adopted by the federal and/or state authorities, as a condition of Permit issuance, the Police Chief may impose labeling and packaging requirements to protect the public safety, health and welfare.
- (h) **Inspection records.** Inspections, if necessary, shall take place at a reasonable time with prior notice to the Cannabis Business. Upon request, the Cannabis Business shall timely provide the City official with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation.
- (i) **Obtain and maintain a business license from the City.**

- (j) Maintain at all times Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for suspension of the permit immediately, and ultimately, revocation.
- (k) By accepting the permit, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law, the City, its officers, agents and employees from and against any all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability caused by the active negligence, sole negligence of willful misconduct of City, its officers, agents and employees.
- (l) Maintain for a minimum of three (3) years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements (including any in-kind contributions) as well as records of all operational expenditures and costs incurred by the permittee in accordance with generally accepted accounting practices and standards typically applicable to business records, which shall be made available to the City during business hours for inspection upon reasonable notice by the Police Chief.
- (m) Notify the Police Chief within three days of any notices of violations or other corrective action ordered by a state or other local licensing authority, and provide copies of the relevant documents.

#### **5.28-10 Conditions for Specific Permits**

- (a) Delivery Permits shall be subject to the following conditions:
  - (1) Maintain at all times all licenses and permits as required by California state law and the laws of the local jurisdiction in which the permittee is located, and provide immediate notification to the Police Chief if any license or permit is suspended or revoked.

- (2) Any person who delivers cannabis to a customer must have in possession a copy of the Delivery/Retailer Permit, which shall be made available upon request to law enforcement.
  - (3) Delivery vehicles shall not advertise any activity related to cannabis nor shall it advertise the name of the permittee.
  - (4) Delivery of the cannabis shall be directly to the residence or business address of the customer; deliveries to any other location are prohibited.
  - (5) Deliveries of cannabis shall occur only between the hours of 8:00 a.m. and 8:00 p.m.
  - (6) No permittee shall transport nor cause to be transported cannabis in excess of the limits established by the State Bureau of Medical Cannabis during the course of delivering cannabis; until the State Bureau of Medical Cannabis establishes the limit, the limit is eight (8) ounces of dried cannabis or its cannabis product equivalent within the City.
  - (7) All orders to be delivered shall be packaged by the names of the customer.
- (b) Dispensary/Retail Permits: The City Council may adopt a resolution to establish special conditions for this type of Permit.

#### **5.28-11 Fees.**

Applicants and permittees shall pay all applicable fees as set forth in the City's Master Fee Schedule adopted by resolution. Applicants and permittees also shall pay the amount as prescribed by the Department of Justice of the State of California for the processing of applicant's fingerprints. None of the above fees shall be prorated, or refunded in the event of a denial, suspension or revocation of the Permit.

#### **5.28-11 Regulations and Enforcement**

- (a) Police Chief or Designee. Any action required by the Police Chief under this Section may be fulfilled by the Police Chief's designee.
- (b) The Police Chief is authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate regulations for such purposes.

#### **5.28-12 Penalties**

- (a) Violations of this Chapter are punishable as misdemeanors. Each day of engaging in any of the prohibited activities shall constitute a separate offense.

- (b) Any violation of this Chapter or regulation promulgated under this Chapter is hereby declared to be a public nuisance.

## **SECTION TWO. CEQA DETERMINATION**

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

## **SECTION THREE. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

## **SECTION FOUR. EFFECTIVE DATE**

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

## **SECTION FIVE. CODIFICATION**

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four, and Five shall NOT be so codified.

Ordinance No. 17 -  
Amending Chapter 28 of Title 5: Cannabis  
\_\_\_\_\_, 2017  
Page 17 of 17

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, \_\_\_\_\_ 2017, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, \_\_\_\_\_, 2017 by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

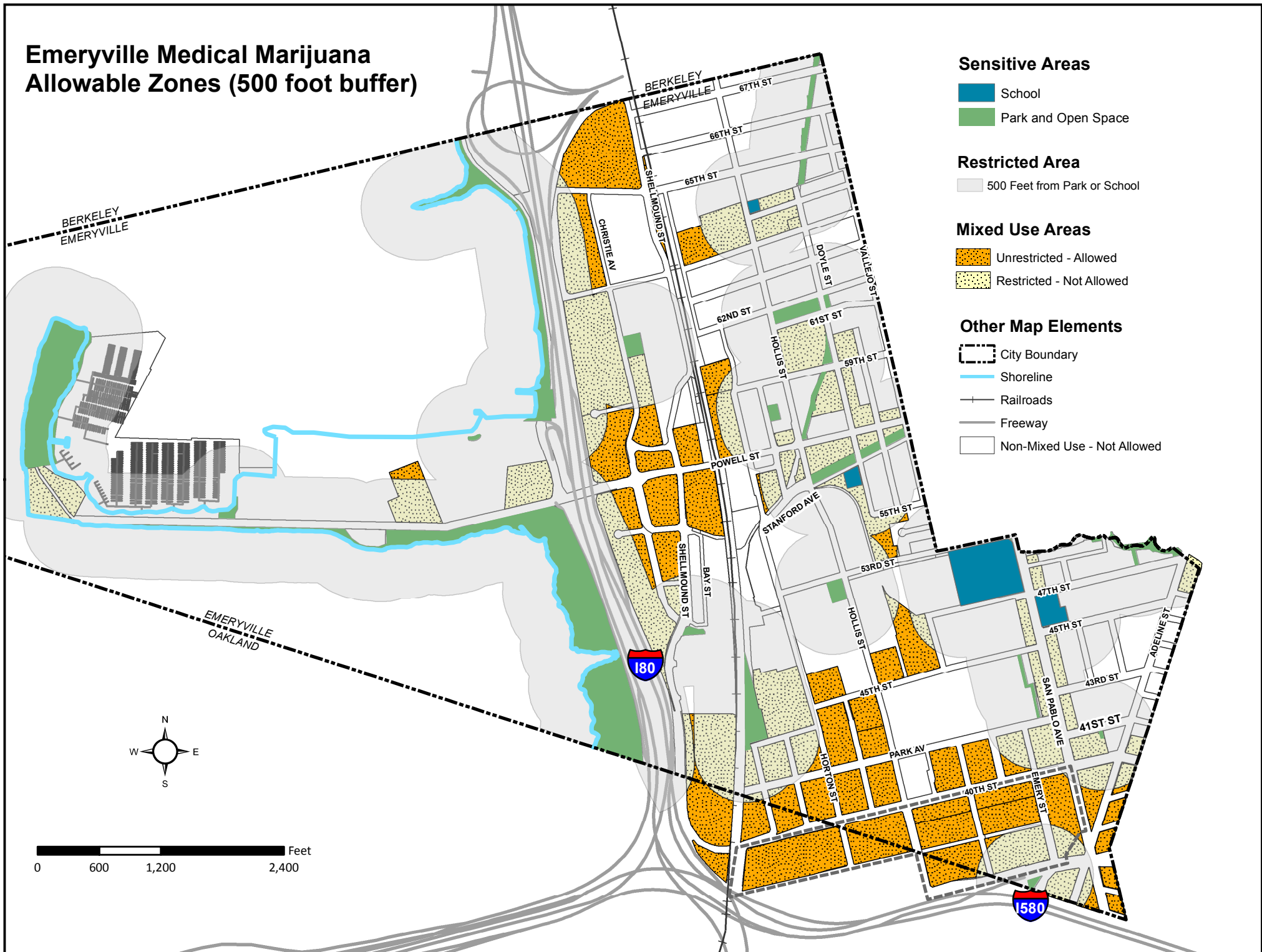
\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



# Emeryville Medical Marijuana Allowable Zones (500 foot buffer)



**PLANNING COMMISSION RESOLUTION NO. ORD16-002**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EMERYVILLE  
INITIATING AN AMENDMENT TO THE PLANNING REGULATIONS IN TITLE 9 OF  
THE EMERYVILLE MUNICIPAL CODE TO ADD ARTICLE 21 TO CHAPTER 5  
CONCERNING STANDARDS FOR CANNABIS-RELATED ACTIVITIES AND TO  
MAKE OTHER RELATED MODIFICATIONS TO THE PLANNING REGULATIONS,  
AND RECOMMENDING ADOPTION BY THE CITY COUNCIL**

**WHEREAS**, the City of Emeryville has prohibited activities related to cannabis since 2006 (Emeryville Municipal Code Title 5, Chapter 28, “Marijuana”), and on January 19, 2016, the City Council adopted an urgency ordinance and introduced a regular ordinance re-affirming the City’s prohibition; and

**WHEREAS**, on March 15, 2016, the City Council held a study session focusing on medical cannabis and provided direction to staff to prepare regulations that allow personal cultivation of cannabis for patients or their primary caregivers, manufacturing and testing of medical cannabis and related products, and a dispensary for medical cannabis; and

**WHEREAS**, since the City Council direction, Proposition 64, the Adult Use of Marijuana Act (“AUMA”), a voter initiative that allows cultivation, manufacturing and retail sale of cannabis and cannabis-related products for recreational purposes, was passed on November 8, 2016; and

**WHEREAS**, Proposition 64 allows each residence to cultivate six cannabis plants for personal use, subject to any reasonable local regulations, and allows local jurisdictions to prohibit commercial cannabis activity, e.g., to prohibit the land uses of cultivation, manufacturing, testing, distribution and retail sale; and

**WHEREAS**, although the City Council was aware that Proposition 64 would be on the November 2016 ballot at the time of its March 2016 study session, the City Council did not provide any explicit direction on regulations for recreational cannabis, but, instead, indicated only that they may be open to allowing recreational cannabis commercial activities if the proposition were to pass; and

**WHEREAS**, the Planning Commission finds that land use impacts of medical and recreational cannabis are the same and therefore no separate use classifications or regulations are necessary; now, therefore, be it

**RESOLVED**, that the Planning Commission hereby finds that this amendment to the Planning Regulations is exempt from environmental review under the “general rule” at Section 15061(b)(3) of the State California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that the proposed amendment to the Planning Regulations may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to

generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed Standards for Personal Cultivation would address any potential impacts of this accessory use; and be it further

**RESOLVED**, that in initiating this amendment to the Planning Regulations and making a recommendation to the City Council, the Planning Commission makes the following findings as required by Emeryville Municipal Code Sections 9-7.1305:

- (a) The proposed amendment is consistent with the General Plan.

**The proposed amendment to the Zoning Ordinance to add a new article pertaining to cannabis-related activities and to make related modifications to the Planning Regulations would be consistent with the following provisions of the General Plan:**

**Goal PP-G-8: A safe, nurturing, and enriching environment, and Goal CSN-G-1: Public health. Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and are regulated similarly. Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities and are regulated similarly. The proposed amendments restrict the location of retail sale of cannabis products from the vicinity of sensitive uses including schools, religious institutions, and parks; add performance standards for cultivation of cannabis plants that are permitted by State law; and regulate manufacturing of cannabis products to a level similar to pharmaceutical products.**

- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

**The proposed amendment to the Planning Regulations will protect the public health, safety, and general welfare and will be of benefit to the public by establishing appropriate locational criteria and standards for cannabis-related activities.**

- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

**The proposed amendment to the Planning Regulations has been determined to be exempt from environmental review under the “general rule” at Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment. Medicinal and recreational Cannabis Sales activities are anticipated to have characteristics similar to Tobacco Sales activities, and medicinal and**

**recreational Cannabis Manufacturing activities are anticipated to have characteristics similar to Pharmaceutical Manufacturing activities. Both are expected to generate a negligible amount of vehicle trips, and any potential impacts on air quality, light and glare, liquid or solid waste, noise, odor, and vibration will be addressed through adherence to the existing Performance Standards in Article 11 of Chapter 5 of the Planning Regulations. In addition, the proposed Standards for Personal Cultivation would address any potential impacts of this accessory use.**

and be it further

**RESOLVED** that the Planning Commission hereby recommends to the City Council that Article 21 be added to Chapter 5 of Title 9 of the Emeryville Municipal Code to read as follows:

**ARTICLE 21. CANNABIS-RELATED ACTIVITIES**

Sections:

9-5.2101	Purpose
9-5.2102	Applicability
9-5.2103	Home Occupations
9-5.2104	Districts Where Allowed
9-5.2105	Conditional Use Permit Required
9-5.2106	Conditions of Approval
9-5.2107	Standards
9-5.2108	Definitions

**9-5.2101 Purpose.**

This Article establishes regulations governing personal cultivation, manufacturing and sales of cannabis and cannabis products. The purpose of these regulations is to provide criteria for the consideration and approval of personal cultivation and businesses engaged in the manufacturing and sales of cannabis and cannabis products. The City finds it necessary to establish such requirements and criteria in the interest of the public health, safety and welfare to regulate all cannabis-related activities.

**9-5.2102 Applicability.**

This Article shall apply to the establishment of all land uses related to Cannabis and Cannabis Products.

**9-5.2103 Home Occupations.**

It is unlawful to engage in Commercial Cannabis Activity as defined in Section 5-28.30(f) of Chapter 28 of Title 5 of the Emeryville Municipal Code, as a Home Occupation as defined in Article 8 of this Chapter.

**9-5.2104 Districts Where Allowed**

- (a) **Personal Cultivation.** Pursuant to State Law, cultivation of no more than six cannabis plants is permitted as an accessory use in all zoning districts subject to the standards in Section 9-5.2107(a).
- (b) **Cannabis Sales and Cannabis Manufacturing.** Cannabis Sales and Cannabis Manufacturing are conditionally permitted in zoning districts as indicated in Table 9-3.202.

**9-5.2105 Conditional Use Permit Required.**

It is unlawful to engage in Cannabis Sales or Cannabis Manufacturing, as such use classifications are described in Chapter 2, without first obtaining a major conditional use permit from the Planning Commission pursuant to the procedures in Article 5 of Chapter 7..

**9-5.2106 Conditions of Approval.**

In approving a conditional use permit for Cannabis Sales or Cannabis Manufacturing, the Planning Commission may designate such conditions as it deems necessary to fulfill the purposes of this Article, including, but not limited to, those deemed necessary to comply with the standards in Section 9-5.2107, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

**9-5.2107 Standards.**

- (a) Personal Cultivation of cannabis plants shall comply with all of the following standards:
  - (1) Growing, processing, or transporting of cannabis plants for personal use must be in full compliance with all the applicable provisions of California law.
  - (2) Cannabis plants shall be grown, possessed, and processed within the primary residence of the person growing, possessing and processing the cannabis plants for personal use. No more than six plants may be cultivated in a dwelling unit.
  - (3) Cannabis plants shall not be grown or processed in the common areas of a multi-unit residential development nor in common areas of any commercial or industrial building; Cultivation and processing of cannabis plants must occur within a building or a dwelling unit and must not be perceptible from the exterior of the building or dwelling unit including but not limited to: visual observation, including any form of signage; unusual odors, smells, fragrances, or other olfactory stimulus; light pollution, glare or brightness; and excessive noise from ventilation fans.
  - (4) Cannabis growth shall meet the requirements of all applicable building and life/safety codes, including requirements concerning electrical systems and ventilation systems.

- (5) Any use of a compressed flammable gas as a solvent or other volatile solvent in the extraction of THC or other cannabinoids for personal use is prohibited.
- (b) Cannabis Manufacturing shall comply with all applicable performance standards in Article 11 of this Chapter and with all applicable general conditions in Chapter 28 of Title 5.
- (c) Cannabis Sales shall not be located within 500 feet of any school, religious institution or public park, and shall comply with all applicable performance standards in Article 11 of this Chapter and with all applicable general conditions in Chapter 28 of Title 5.

**9-5.2108 Definitions.**

- (a) “Cannabis.” See Section 5-28.03(b) of Chapter 28 of Title 5.
- (b) “Cannabis Product.” See Section 5-28.03(e) of Chapter 28 of Title 5.
- (c) “Commercial Cannabis Activity.” See Section 5-28.03(f).
- (d) “Cultivation.” See Section 5-28.03(g) of Chapter 28 of Title 5.
- (e) “Public park” means a park, playground, swimming pool, beach, pier, or athletic field within the city which is under the control, operation, or management of the City.
- (f) “Religious institution” means a building which is used primarily for religious worship and related religious activities.
- (g) “School” means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or a special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or any institution of higher education, including a community or junior college, college or university.

and be it further

**RESOLVED** that the Planning Commission hereby recommends to the City Council that the following amendments be made in Chapters 2 (“Use Classification”), 3 (“Zoning Districts”), and 5 (“Citywide Use and Development Regulations”) of Title 9 of the Emeryville Municipal Code. The proposed amendments are denoted by ~~strike through type~~ for language that is deleted and double underlined type for new language.

## CHAPTER 2. USE CLASSIFICATION

### ARTICLE 3. COMMERCIAL AND INSTITUTIONAL USE TYPES

#### 9-2.353. Retail

- (i) **Cannabis Sales.** Establishments engaged in the business of selling cannabis or cannabis products, as such products are defined in Section 5-28.30(e) of Chapter 28 of Title 5, for off-site and on-site consumption.

### ARTICLE 4. INDUSTRIAL USE TYPES

#### 9-2.417 Manufacturing

- (f) **Cannabis Manufacturing.** Establishments engaged in Commercial Cannabis Activity, as defined in Section 5-28.03(f) of Chapter 28 of Title 5.

### ARTICLE 7. PRINCIPAL AND ACCESSORY USES

#### 9-2.701 Uses of Special Concern.

- (i) Retail

- (4) Cannabis Sales

- (m) Manufacturing

- (3) Cannabis Manufacturing

#### 9-2.702 Uses That Are Always Accessory Uses.

- (p) **Personal Cultivation of Cannabis Plants.** Growing, possessing, processing, or transporting of cannabis plants for personal use in compliance with applicable provisions of California law. See also Article 21 of Chapter 5.

## CHAPTER 3. ZONING DISTRICTS

### ARTICLE 2. USES PERMITTED, CONDITIONALLY PERMITTED, AND PROHIBITED

#### 9-3.202 Uses Permitted, Conditionally Permitted and Prohibited.

Uses, as classified in Chapter 2, are permitted, conditionally permitted, or prohibited in base and overlay zones as indicated in Table 9-3.202. Uses not classified in Chapter 2 are prohibited. The regulations for each use in each zone are established by letter designations as follows:

[Remainder of text preceding Table 9-3.202 is unchanged.]

**Table 9-3.202: Uses Permitted, Conditionally Permitted, and Prohibited.**

	Base Zones													
Use Classifications	RM Medium Density Residential	RMH Medium High Density Residential	RH High Density Residential	MUR Mixed Use with Residential	MURS Mixed Use with Residential South	MUN Mixed Use with Non-Residential	OT Office/Technology	OT/DH Office/Technology Doyle Hallie North Area	INI Light Industrial	INH Heavy Industrial	P Public	M Marina	PO Park/Open Space	SM Shoreline Management
<b>Commercial and Institutional</b>														
Retail														
<u>Cannabis Sales</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b>Industrial</b>														
Manufacturing														
<u>Cannabis Manufacturing</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>



**CHAPTER 5. CITYWIDE USE AND DEVELOPMENT REGULATIONS**

**ARTICLE 2 MISCELLANEOUS USE REGULATIONS**

**~~9-5.207~~ Medical Marijuana Dispensaries**

~~Medical marijuana dispensaries are prohibited pursuant to Section 5.28.05 of Chapter 28 of Title 5.~~

and be it further

**RESOLVED**, that the Planning Commission hereby initiates an amendment to the Planning Regulations by recommending to the City Council that it add Article 21 to Chapter 5 of Title 9 of the Emeryville Municipal Code concerning Cannabis-Related Activities and make modifications to Chapters 2, 3, and 5 of Title 9 of the Emeryville Municipal Code, as detailed above.

**APPROVED** by the Planning Commission of the City of Emeryville at a regular meeting held on Thursday, December 8, 2016, by the following votes:

**AYES:** \_\_\_\_\_

**NOES:** \_\_\_\_\_ **ABSTAINED:** \_\_\_\_\_

**EXCUSED:** \_\_\_\_\_ **ABSENT:** \_\_\_\_\_

\_\_\_\_\_  
**CHAIRPERSON**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**RECORDING SECRETARY**

\_\_\_\_\_  
**ASSISTANT CITY ATTORNEY**