

California Model Cannabis Ordinance Overview

The following model ordinance was drafted to enable California local governments to develop a State-compliant framework for authorizing local permitting of cannabis businesses while ensuring public safety and moving towards minimizing the cannabis black market. The initial draft of the model ordinance was drafted from a combination of the best elements of the current cannabis ordinances that have been enacted in California combined with some elements of successful regulations that have emerged in other states. The draft was then conformed to comply with the Medical Cannabis Regulation and Safety Act (“**MCRSA**”), the Adult-Use of Marijuana Act (“**AUMA**”) and Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulatory and Safety Act (“**MAUCRSA**”) which consolidated the treatment of certain elements of MCRSA and AUMA. The resulting draft was then circulated for comments and input from city attorneys, law enforcement, patient advocacy groups, NGO’s and local governmental leadership.

This ordinance was updated to incorporate all applicable changes to State law from the passage of MAUCRSA but will be further updated awaiting the outcome of regulatory efforts following MAUCRSA. This ordinance is comprehensive, containing regulatory criteria for all cannabis business licensing categories (cultivation, manufacturing, testing, transportation, distribution and retail), and providing local governments with the local control and flexibility to remove or approve licensing categories as it best suits the applicable community.

The ordinance is structured generally as follows:

- Sec. XX.02 Definitions of All Relevant Terminology
- Sec. XX.05 Business Standards. Highlights zoning and land use, cannabis business siting procedures (such as conditional use permits), cannabis business licensing categories, basic regulatory criteria for all cannabis businesses (cultivation, manufacturing, testing, distribution, transportation and retail), covering requirements for security, hours of operation, ventilation and signage;
- Sec. XX.06 and XX.07 Application Requirements and Ongoing Compliance Requirements. Highlights criteria which all cannabis businesses should meet in order to receive consideration for a local license to operate, related licensing fees, as well as conditions for which a jurisdiction would deny permission to operate;
- Sec. XX.08 Enforcement. Highlights punitive measures a local jurisdiction should take to terminate operations of a cannabis business that is out of compliance with local and/or State law, as well as related fines for code violations;
- Sec. XX.09. Requirements for State medical licenses under the split regime set forth under MCAURSA.
- Sec. XX.10– XX.15 Cannabis Business Licensing. Highlights specific regulatory requirements for the operation of cannabis businesses in all licensing categories, including cultivation, manufacturing, testing, distribution, transportation and retail; and
- Sec. XX.16 Taxation. Highlights tax assessment and flat fee options for cannabis businesses.

If you have any questions, comments or revisions, please contact us at CAORD@wmpolicy.com.

California Model Cannabis Ordinance

The following draft ordinance was drafted to enable Cities to develop a State-compliant framework for permitting marijuana businesses. It was drafted with inputs from stakeholders including city attorneys, NGO’s, law enforcement, patient advocacy groups and local governmental leadership.

Revision History

Draft Date	Material Revisions
4-6-17	Inclusion of additional preamble materials.
4-30-17	Update to include alternative governance provisions in Section XX.05. Addition of background text provisions. Inclusion of language to mirror AUMA w/r/t Lessors in Section 2..06(a)(7).
5-16-17	Addition of cover introduction. Expansion of commentary on tax and illegal markets.
9/6/17	Revised in accordance with California’s Medicinal and Adult-Use Cannabis Regulation and Safety Act. Inclusion of more detailed explanation of tax and enforcement costs. Addition of more granular compliance requirements for medical licensees.

Commentary and Drafting Notes

1. Editing Notes.

- 1.1. **City Name.** Conduct a find and replace for [CITY NAME] to fill correct name.
- 1.2. **Chapter Number.** The Model Ordinance is drafted to be a chapter insertion in the city code. Setting the chapter number can be accomplished by changing the [XX] references to the applicable chapter number and changing the “XX” numbering prefixes in the autonumbering to the appropriate chapter.
- 1.3. **Ordinance Number.** The number of the City ordinance may be inserted by doing a find and replace on the term [ORD NO].
- 1.4. **Permit Zones.** The definition of Permit Zones should be modified to reflect the zoning areas in which the different types of permits may be placed. For example, to the extent cultivation is desired to only be placed in light industrial zones, this can be accomplished by editing the definition of Permit Zones with respect to Cultivation Permittees.
- 1.5. **Tax Method.** In Section XX.16 there are multiple options for tax or fee structures. Each of these would require an affirmative vote by the voters of the City to comply with the requirements of California Proposition 62. Delete the non-desired options.

2. Landscape of State Law.

- 2.1. **Cannabis Trailer Bill.** As part of the 2017-2018 California State Budget the Legislature passed and the Governor signed MAUCRSA which made significant changes to the State’s cannabis laws. MAUCRSA reconciles the differences between AUMA and MCRSA, and unifies the adult-use and medicinal markets within the same regulatory structure. The Model Ordinance has been updated in accordance with MAUCRSA.
- 2.2. **Separation of Medical and Adult Use.** Under MAUCRSA cannabis businesses may apply for either medical or adult-use licenses. Except for testing licenses which authorize the licensee to test both adult-use and medical cannabis products, the types of licenses available for commercial adult-use cannabis activity and commercial medicinal cannabis activity will be the same. Medical operators will apply for “M-Licenses” and adult-use operators will apply for “A-Licenses.” State law does not prohibit a business from being licensed as both medical and adult-use. The licensure requirements for M-licensees and A-licensees are essentially identical in state law. From a business operations standpoint, the processes utilized and products sold in adult-use and medical markets are also substantially similar. Considering the similar statutory and practical operating standards, this model ordinance provides that a local permit authorizes a permit holder to conduct both adult-use and medical commercial cannabis activities. This will be necessary as very few local jurisdictions have permitted commercial cannabis activity and many of the current ordinances regulate only medical cannabis. Allowing permittees to operate in both markets will ensure local operators can work with cannabis businesses in other jurisdictions.

- 2.3. **State Buffer Zones for Permittees.** The Model Ordinance does not include zoning restrictions beyond what is required under state law. MAUCRSA prohibits all licensees from being located within 600 feet of a school, day care center, or youth center (See Business and Professions Code (“BPC”) Section 26054). Medical cannabis establishments are prohibited from locating within 600 feet of a school (See Health and Safety Code Section 11362.768). MAUCRSA gives local governments authority to establish more or less restrictive zoning and land-use standards. Considering that each California city and county has unique needs in regards to zoning and land-use, we feel that it is best for local jurisdictions to make these determinations. We urge caution in any increase in either the radius of zoning restrictions or the number of business types to which this zoning restriction applies. Both changes have the effect of overly limiting marijuana businesses from having access to suitable real estate, push marijuana businesses to low income neighborhoods and increase illegal market levels due to decreased patient access.
- 2.4. **State Advertising Rules for Cannabis.** The Model Ordinance does not include a chapter devoted to advertising of cannabis and cannabis products as there are extensive rules under state law regarding this issue. Among other restrictions, MAUCRSA prohibits state licensees from advertising or marketing in a manner that is fraudulent, encourages persons under 21 to consume cannabis, or is within 1,000 feet of a daycare center, school, playground, or youth center (See Chapter 15 of Division 10, commencing with Section 26150, of the BPC for MAUCRSA advertising statutes). In addition to MAUCRSA’s advertising rules, there are several state and federal laws regarding cannabis advertising the cannabis industry is subject to, some of which are listed below:
- 2.4.1. BPC 2525.5 - Prohibits advertising for physician recommendation for medical marijuana unless the advertisement includes a specified notice to consumers.
- 2.4.2. BPC 22580 - Prohibits advertising drug paraphernalia and controlled substances towards minors.
- 2.4.3. BPC 17200 - California's unfair completion law, which prohibits any fraudulent or misleading advertisements.
- 2.5. **State Tax Regime.** Proposition 64 created new excise taxes for cannabis sales and cultivation which were carried forward under MAUCRSA. Cannabis is subject to the following state taxes:
- 2.5.1. **Retail Excise Tax:** Proposition 64 imposes a 15% tax on all retail sales of cannabis, though medical cannabis purchased by patients with ID cards is exempt.
- 2.5.2. **Cultivation Excise Tax:** Proposition 64 also imposes a per weight tax on cannabis cultivation, at \$9.25 per ounce of marijuana flowers and \$2.75 per ounce of cannabis leaves.
- 2.6. **State Sales and Use Tax:** Cannabis is subject to the state sales and use tax. The current base sales and use tax rate is 7.25%. In most areas of California, local jurisdictions have added district taxes that increase the tax owed by a seller. For example, some incorporated

cities in L.A. County have added an additional 1-2% local tax rate (resulting in an aggregate sales tax rate exceeding 9%).

3. City Considerations.

3.1. **Choice of City Taxation or Fee Collection Model.** There are a variety of cannabis tax and fee models that cities across California have utilized. Examples include taxing gross receipts, square footage, or some combination of both gross receipts and square footage. Section XX.16 of this model ordinance provides three taxation models for consideration: tax on gross revenue, a square footage flat tax and a hybrid model.

3.2. **Optimizing and Estimating City Marijuana Tax Revenue.** Whichever tax model is utilized, cannabis taxes should be tailored conservatively so as not to enable illegal market activity. Consider that before cannabis and cannabis products are sold to a consumer, there are built in state taxes (excise, sales and cultivation) and fees (licensing and inspection) that lead to an effective tax rate of 30-32% without including any tax at the local jurisdiction level. This is among the highest net effective tax rates on marijuana in the country and leaves limited room for local governments to add on high levels of additional taxes without risking high illegal market rates. Additionally, any local tax above the retail level is baked into supply chain pricing and is taxed in the aggregate by the state sales tax. Accordingly, with local taxes in excess of 2-3% at multiple layers of the supply chain, it is possible to achieve a net effective tax rate over 50-60% in California.

3.2.1. Optimal Local Tax Rate. High taxes and fees drive up the cost of cannabis in regulated markets, allowing illicit operators to undercut prices and flourish. Given the high level of taxes imposed by the State already, we estimate that there is limited ability for local governments to add additional taxes that exceed 2-3% at the retail level initially. Over these levels, local jurisdictions run a risk of seeing diminishing tax returns due to (i) increased illegal market operators siphoning off taxable revenue, (ii) potential city licensees choosing lower tax local jurisdictions, (iii) lower profitability of operating legal operators and (iv) increased local enforcement costs.¹ As markets stabilize and illegal market operators are shut down or convert to the legal market, it may be possible to increase the effective local tax rate without large increases in illegal market levels.

3.2.2. Estimating Tax Revenue. Below are metrics that can be utilized to estimate yearly tax revenue associated with selected licensing categories.

3.2.2.1. Retailer. Research from industry experts indicates that a retailer will service approximately 200-300 customers per day, and each customer will spend \$60 on average. 200 customers per day * \$60 * 365 days = \$4,380,000 total gross revenue and at 300 customers this figure is \$6,570,000. An annual net tax of 2% ($\$4,380,000 * .02$) or ($\$6,570,000 * .02$) produces a yearly tax revenue of

¹ See associated WMP white papers for further detail.

\$87,600 to \$131,400 per retail license holder. Please note that our recommended retailer density of 1 per every 7,500 contributes to optimizing legal market revenue at dispensary locations through the reduction of the illegal market.²

3.2.2.2. Manufacturer. While the price of a pound of cannabis fluctuates due to market forces, it is estimated that an extremely conservative estimate on the cost per pound of indoor-grown cannabis flower is \$1700-\$1800 (and can currently range up towards \$3,500 for premium grade product). A manufacturer will generally utilize 26 pounds of cannabis flower to produce 2.6 pounds of concentrate per day. Given an average wholesale price for concentrates of \$6,810/pound (\$15 per gram), the total yearly gross revenue for a processor would $\$6,810 * 2.6 \text{ pounds of concentrate} * 365 \text{ days}$, yielding \$6,462,690 in gross revenue. A 2% tax rate produces \$129,253.80 of tax revenue per manufacturer for a locality.

3.2.2.3. Indoor Cultivation. There are 2 methods of taxation that can be applied to indoor cultivation: gross tax and flat fee. A combination of these two methods can also be utilized by a locality. State law delineates indoor cultivators by square footage of canopy space: 5,00, 10,000, 22,000 and 44,000 sq. ft. In the example below, a 22,000 sq. ft. indoor cultivation is used.

3.2.2.3.1. Indoor Gross Tax Estimate. On average, an indoor cultivation facility will have 4.5 harvests per year. The facility will utilize 40 watts per square foot, and each watt will produce a conservative estimate of .7 grams per watt. Using a 22,000 sq. ft. facility for example, the expected revenue can be calculated via the following formula: $22,000 \text{ sq. ft.} * 40 \text{ watts per square foot} * .7 \text{ grams per watt} * 4.5 \text{ harvests}$ yields 2,772,000 grams of flower per year. Dividing the grams of flower per year by 454 (grams in one pound) equals 6,106 pounds of flower per year. Multiplying the pounds-per-year times the conservative wholesale price estimate per pound of indoor grown cannabis flower (\$1700) equals a gross annual revenue of \$10,380,200 per 22,000 sq. ft. indoor cultivation facility per year. A 2% tax rate produces \$207,604 per year per 22,000 sq. ft. indoor cultivator.

3.2.2.3.2. Outdoor Gross Tax Estimate. On average, an outdoor cultivation facility will have 2 harvests per year without supplemental heating or seasonal greenhousing. Taking an expected yield of 20 grams per square foot for outdoor cultivation and multiplying it by 43,560 sq. ft. (the number of square feet in 1 acre) times 2 harvests a year yields 1,742,400 grams of flower a year, which is 3,837 pounds. Using a wholesale price estimate of 1,200 gives a gross revenue of 4,604,400 per acre. At a 2% tax rate this generates \$92,088 per acre. We also note that inspection and compliance costs to the City will generally be lower with outdoor cultivation sites.

² Id.

- 3.2.2.3.3. Flat Fee. The tax revenue for a flat fee can be calculated by multiplying the number of square feet by the decided upon fee per square foot. Using a flat fee of \$15 per square foot for a 22,000 sq. ft. facility (\$15 * 22,000 sq. ft.) yields \$330,00.00 in tax revenue for one licensee.

3.3. Reducing City Enforcement Costs.

- 3.3.1 Based on public information requests in several cities which have conducted enforcement raids, we estimate that an enforcement action against an illegal operator costs the applicable jurisdiction between \$50,000 and \$100,000 for each action, excluding incarceration and judicial costs. Without local jurisdictions adopting policies designed to reduce the illegal market such as ensuring sufficient business density or using incremental tax rates, law enforcement becomes the sole means of eradicating the illegal market. The legal market itself should be viewed as a tool in minimizing the illegal market in conjunction with traditional enforcement, however, this is only achieved through policies that create advantages for legal market operators over illegal operators. Cities can channel demand for cannabis towards legal outlets by making legal businesses more competitive regarding price, accessibility and advertising. This tailoring allows law enforcement to focus on a smaller number of remaining actors, who will lose a significant portion of funding to legal points of sale.³
- 3.3.2 In addition to considering the cost per enforcement action, there is also the issue of illegal operator reopen rates after the raid. Generally, we have found that illegal shops tend to have a reopen rate that rises linearly with the size of the illegal market. So, for instance, in a jurisdiction with a 50% illegal market rate, we observe a rate of closed shops reopening that is approximately 40-50%. In this example, it may easily cost 2x-3x more to shut illegal shops down to account for the rate of reopen. As illegal market rates tail down towards 20-30%, we observe much more success in keeping illegal market operators from reopening.

3.4. Presenting Taxation/Fees to the Voters.

- 3.4.1. **Ability to Tax.** California cities and counties have broad authority under state law to establish taxes on commercial cannabis activity. Like all other local taxes, taxes on commercial cannabis activity are subject to voter approval. *A Look at Voter Approval Requirements for Local Taxes*, a report by the California Legislative Analyst's Office, provides an overview of voter approval requirements for taxes.
- 3.4.2. **Fees That Do Not Require Voter Approval.** Regulatory fees are not subject to voter approval. Fees need to be narrowly tailored to address the specific activity being regulated. Fees cannot exceed the local jurisdictions reasonable regulatory costs and must provide a service directly to the fee payers. It is important to consult with city

³ See associated WMP white paper studying enforcement cost data for further detail.

or county counsel and plan appropriately to ensure regulatory fees are appropriately structured.

3.5. Permitting Delivery.

3.5.1. There are several businesses that offer only delivery or contract with dispensaries to deliver products. Creating a delivery permit or sub-permit would be consistent with existing business practices, and provide more transparency and traceability for regulators. Additionally, it would allow cities to provide sufficient access to medical patients while keeping retail density (storefront and delivery) at reasonable levels. To meet the state’s public protection goals, delivery should be allowed with best practices established for oversight. Leading delivery businesses have already implemented rules like per order tracking for drivers; maintaining a central delivery headquarters that can be inspected; secure in-vehicle storage requirements; real-time inventory tracking for all delivery vehicles; and regular vehicle inspections. Correspondingly, the rules crafted should be conservatively tailored to ensure that undue costs aren’t placed on nascent permittees and to ensure that operators exit the illegal market.

3.6. Permitting Self-Distribution.

3.6.1. MAUCRSA permits Manufacturing Permittees and Cultivation Permittees to self-distribute the products which they produce in the sense that they may be sold directly to retailers, however they must be transported to market by an entity holding a distribution license. There is no restriction on distribution licenses being held by an entity that holds other license types, excluding laboratory testing.

3.6.2. A lack of distribution in a local jurisdiction may create a bottleneck for local operators who are either limited in the number of distribution options or that face onerous pricing from a limited number of monopolistic distributors. Accordingly, we have included an option for all licensees for manufacturing and cultivation to also apply to receive a distribution license from the city. The effectiveness of such license would be subject to such City Licensee receiving a State license.

3.7. Regulatory Structures. A city may organize regulatory responsibility and oversight over commercial cannabis activity in several ways. Section XX.05 of this model ordinance provides two options for consideration. Governing Structure Alternative 1 would create a new board appointed by the city council to issue permits and provide oversight. Governing Structure Alternative 2 gives this authority to the City Manager and builds out the complete regulatory structure. If a city would like to utilize Governing Structure Alternative 1, this be accomplished by replacing the phrases “City Manager or the City Manager’s designee” and “City Manager” with “The Board.”

3.8. Outdoor Cultivation.

3.8.1. The Model Ordinance is drafted to allow outdoor cultivation. If it is desired to only allow indoor cultivation (or conversely only outdoor cultivation), such restriction should be inserted in Section XX.10 and in the definition of Fully Enclosed and Secure Structure.

3.8.2. Indoor cannabis cultivation requires a significant amount of energy. A typical indoor grow room for marijuana has a power density of about 200 watts per square foot. There will likely be areas in the state that lack the necessary infrastructure, especially in the short term, to distribute power to cannabis cultivation facilities. Outdoor and greenhouse cultivation require much less energy and are a viable option for jurisdictions seeking to limit energy consumption by the cannabis industry. There are steps local jurisdictions can take to ensure outdoor or mixed light cannabis cultivation is done safely and discreetly, which will help to significantly balance energy demand.

3.9. Permit Zoning Regions.

3.9.1. Zoning and licensing can be powerful tools in controlling the number and location of business types in a jurisdiction, however a thoughtful approach to zoning is necessary to achieve desired outcomes for the cannabis industry. For example, just as artificially capping the number of marijuana dispensaries would fail to crowd out the illicit market, so would overly restrictive zoning. This is so because restrictive zoning and artificial cannabis industry business density caps will deprive marijuana businesses of the most fundamental features desired by all consumers – convenience and accessibility.

ORDINANCE NO. [ORD NO]

AN ORDINANCE OF THE CITY COUNCIL OF [CITY NAME], COUNTY OF [COUNTY NAME], CALIFORNIA, ADDING CHAPTER [XX] REGARDING CANNABIS PERMITTING AND REGULATION.

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (“**MMRSA**”), effective January 1, 2016, which establishes a comprehensive State of California licensing and regulatory framework for the cultivation, manufacturing, testing, distribution, transportation, dispensing, and delivery of medical cannabis, and which recognizes the authority of local jurisdictions to prohibit or impose additional restrictions on any such medical cannabis activity.

WHEREAS, on June 27, 2016, Governor Brown approved Senate Bill number 837 (“**SB 837**”), effective immediately, which amends the MMRSA and renames it the Medical Cannabis Regulation and Safety Act (“**MCRSA**”).

WHEREAS, on November 9, 2016, the Adult Use of Marijuana Act (“**AUMA**”) was passed into law as a voter initiative by the voters of the State of California.

WHEREAS, the AUMA legalizes the non-medical adult use of marijuana by adults age 21 and over, imposes taxes on the retail sale and cultivation of marijuana, and reduces penalties for marijuana-related crimes.

WHEREAS, on June 27, 2017 Governor Brown signed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“**MAUCRSA**”). The new law reconciles the differences between AUMA and MCRSA, and unifies the adult-use and medicinal markets within the same regulatory regime.

WHEREAS, the City of [CITY NAME] (“**City**”) wishes to establish Chapter [XX] to the City Code to create a comprehensive regulatory framework for Medicinal Cannabis and Adult Use Cannabis and to reflect MAUCRSA.

WHEREAS, it is the purpose and intent of the City to regulate Cannabis in a manner that is consistent with California law and promotes the health, safety, and general welfare of the residents and businesses within the City, while limiting any negative impacts.

WHEREAS, the City intends to be on the forefront of groundbreaking research, science, innovation, and development of treatment for symptoms and cures in the field of cannabis, as scientific research, studies, and data have established that cannabis can help patients with a vast array of medical conditions that affect human beings.

WHEREAS, the City desires to reduce the illegal market for Cannabis while minimizing the chances of social harm and creating jobs and tax revenue for the City.

WHEREAS, nothing in this Ordinance No. [ORD NO] (this “**Ordinance**”) shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under California state law, as amended, except to the extent otherwise specifically set forth.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF [CITY NAME] DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. City Code Chapter [XX] (Cannabis Permitting and Regulation) is hereby added, and is to read in its entirety as follows:

XX.01 Intent and Purposes The intent and purpose of this Chapter is to regulate Commercial Cannabis Activity (as defined below) in accordance with State Law (as defined below) to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA. The goals of this regulation for Commercial Cannabis Activity include:

- (a) To minimize the size of the illegal market for Cannabis in the City and the surrounding regions.
- (b) To create jobs, tax revenue and economic growth for the City and its residents.
- (c) To enable law enforcement and regulators to have sufficient rights to inspect and audit Commercial Cannabis Activity and take expeditious action against Persons who violate the requirements of this Chapter.
- (d) To minimize social harms which may arise from Cannabis including youth consumption or intoxicated driving.
- (e) To regulate the operation and location of Commercial Cannabis Activity such that public nuisance is minimized.

XX.02 Definitions. For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

- (a) “**A-License**” means a State License issued under Division 10, commencing with Section 26000 of the Business and Professions Code, for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations or an interim license issued by the State for the same.
- (b) “**A-Licensee**” means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations or an interim license issued by the State for the same.
- (c) “**A-Permit**” means a City Permit issued under this chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations.

- (d) “**A-Permittee**” means any Person holding a City Permit issued under this chapter for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations.
- (e) “**Adult Use Cannabis**” means the non-medical use of cannabis by adults of age 21 and over as permitted by MAUCRSA and other applicable State and City laws.
- (f) “**Business and Professions Code**” means the California Business and Professions code, as amended from time to time.
- (g) “**Cannabis**” shall have the same meaning as in Section 26000 of the Business and Professions Code.
- (h) “**Cannabis Premises**” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or City Permittee where the Commercial Cannabis Activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one City Permittee.
- (i) “**Cannabis Permit**” means a permit issued by a city in the State (as defined below), including the City, and a license issued by the State, in each case, in accordance with, and to the extent required by, applicable State Law, in order to participate in a Commercial Cannabis Activity, such as Cultivation, Manufacturing, Distribution, Transportation, Testing, retail sale, or Delivery.
- (j) “**Cannabis Permittee**” means a Person who holds a Cannabis Permit.
- (k) “**Cannabis Product**” shall have the same meaning as in Section 11018.1 of the Health and Safety Code.
- (l) “**City**” shall have the meaning assigned to such term in the Preamble of this Ordinance.
- (m) “**City Code**” means the City of [CITY NAME] Municipal Code.
- (n) “**City Council**” means the current members of the City Council of the City.
- (o) “**City Manager**” means the individual duly appointed by a majority of the City Council to serve in the capacity as executive officer of the City on a permanent or interim basis or such other official as designated by the City to fulfill such duties.
- (p) “**City Permit**” means a permit issued by the City, in accordance with this Chapter and State Law, authorizing participation in a Commercial Cannabis Activity, such as Cultivation, Manufacturing, Distribution, Testing, retail sale, or Delivery.
- (q) “**City Permittee**” means a Person that has been issued a City Permit.
- (r) “**Commercial Cannabis Activity**” includes the Cultivation, possession, Manufacture, Distribution, processing, storing, laboratory Testing, packaging, labeling, Transportation, Delivery or sale of Cannabis and Cannabis Products as provided for in this chapter and Division 10, commencing with Section 26000, of the Business and Professions Code.
- (s) “**Cultivation**” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.
- (t) “**Cultivation Permit**” means a City Permit for the Cultivation of Cannabis in accordance with the terms and conditions of this Chapter and the conditions of approval

for the applicable City Permit issued to the particular Cultivation Permittee. Such Permits shall be associated with State License types 1A, 1B, 1C, 2A, 2B, 3A, 3B, 4, 5A or 5B or such other Cultivation license types created by the State.

(u) **“Cultivation Permittee”** means an applicant who has applied for and has been issued a Cultivation Permit by the City pursuant to the terms and conditions of this Chapter.

(v) **“CUP”** means a Conditional Use Permit issued by the City in accordance with City Code.

(w) **“Deliver” or “Delivery”** means the commercial transfer or Delivery of Cannabis or Cannabis Products to a customer.

(x) **“Distribution”** means the procurement, sale, and transport of Cannabis and Cannabis Products between State Licensees, including any City Permittees who are State Licensees.

(y) **“Distribution Permit”** means a City Permit for Distribution in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to such Distribution Permittee. Such Permits shall be associated with State License Type 11 or such other Distribution license types created by the State.

(z) **“Distribution Permittee”** means a Person that has been issued a Distribution Permit by the City pursuant to the terms and conditions of this Chapter.

(aa) **“Fully Enclosed and Secure Structure”** means (i) a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is reasonably secure against unauthorized entry and provides complete visual screening or is behind fencing or other features providing complete visual screening, and which is accessible only through one or more lockable doors and is inaccessible to minors or (ii) in the case of Outdoor Cultivation, a space that is fully enclosed by fencing, walls or other barriers that are sufficient to prevent unauthorized access and entry. [*Drafting Note*: This allows for Outdoor Cultivation. Alternative language can be provided for restricting outdoor Cultivation.]

(bb) **“Gross Receipts”** means the total amount of the sales of a City Permittee, valued in money, whether paid in money or otherwise, without any deduction for the cost of materials used, any costs of transportation of the City Permittee, or any other expenses. [*Drafting Note*: Remove if Alternative 1 not used under Section XX.16.]

(cc) **“Health and Safety Code”** means the California Health and Safety Code, as amended from time to time.

(dd) **“Indoor Cultivation”** means a Cultivation using exclusively artificial lighting.

(ee) **“Manufacture”** means to compound, blend, extract, infuse, or otherwise make or prepare a Cannabis Product from such blends, extractions or infusions.

(ff) **“Manufacturing Permit”** means a City Permit to Manufacture in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the applicable Manufacturing Permittee. Such Permits shall be associated with State License types 6 or 7 or such other Manufacturing license types created by the State.

(gg) “**Manufacturing Permittee**” means a Person that has been issued a Manufacturing Permit by the City.

(hh) “**Medicinal Cannabis**” or “**Medicinal Cannabis Product**” means Cannabis or a Cannabis Product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a Medicinal Cannabis patient in California who possesses a physician’s recommendation.

(ii) “**M-License**” means a State License issued for Commercial Cannabis Activity involving Medicinal Cannabis.

(jj) “**M-Licensee**” means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for Commercial Cannabis Activity involving Medicinal Cannabis or an interim license issued by the State for the same.

(kk) “**M-Permit**” means a City Permit issued under this chapter for Commercial Cannabis Activity involving Medicinal Cannabis.

(ll) “**M-Permittee**” means any Person holding a City Permit issued under this chapter for Commercial Cannabis Activity involving Medicinal Cannabis.

(mm) “**Mixed Light Cultivation**” means a Cultivation facility using a combination of natural and supplemental artificial lighting.

(nn) “**Modular Building**” means a structure that is transportable in one or more sections and is designed or equipped for the Manufacturing of Cannabis Products, including the compliance with all safety requirements set forth by the City.

(oo) “**Ordinance**” shall have the meaning assigned to such term in the Preamble of this Ordinance.

(pp) “**Outdoor Cultivation**” means any Cultivation conducted without the use of artificial lighting.

(qq) “**Permit Zone**” means, with respect to a Person holding a City Permit, the zones or portions of the City where such City Permit type is permitted to operate. Such Permit Zones may be amended from time-to-time by a majority vote of the City Council. To the extent not otherwise specified in this definition, a City Permittee shall be able to operate in any portion of the City which complies with the zoning, radius and other requirements of Section XX.05. The initial Permit Zones shall be as follows:

- (1) With respect to Retail Permits, [*Insert Zoning areas*].
- (2) With respect to Cultivation Permits for Indoor Cultivation, [*Insert Zoning areas*].
- (3) With respect to Cultivation Permits for Outdoor Cultivation, [*Insert Zoning areas*].
- (4) With respect to Cultivation Permits for Mixed Light Cultivation, [*Insert Zoning areas*].
- (5) With respect to Distribution Permits, [*Insert Zoning areas*] or, if such Distribution Permit is held by a Permittee who also holds another City Permit type, the location

where the operations of such City Permit type are conducted (e.g. the site of a Cultivation Permit).

(6) With respect to Manufacturing Permits, [*Insert Zoning areas*].

(7) With respect to Testing Permits, [*Insert Zoning areas*].

(rr) “**Person**” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(ss) “**Physician Services**” means the consultation by a State-licensed physician of a patient with the possible recommendation by such physician of Medicinal Cannabis for such patient.

(tt) “**Retail Establishment**” means a premises where Cannabis or Cannabis Products are offered, either individually or in any combination, for retail sale or Delivery to customers, patients or primary caregivers pursuant to State Law.

(uu) “**Retail Permit**” means a City Permit to sell and Deliver Cannabis and Cannabis Products to customers, patients and primary caregivers in accordance with the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the particular Retail Permittee. Such Permits shall be associated with State License type 10 or such other Retail license types created by the State.

(vv) “**Retail Permittee**” means a Person that has been issued a Retail Permit by the City pursuant to the terms and conditions of this Chapter.

(ww) “**State**” means the State of California.

(xx) “**State Law**” means all laws of the State, including all rules and regulations adopted by State agencies and State regulatory entities.

(yy) “**State License**” means a State License issued under Division 10, commencing with Section 26000, of the Business and Professions Code, and includes both an A-License and M-Licenses as well as a testing laboratory License.

(zz) “**State License Deadline**” means [the later of (i) the first anniversary of the date on which the Bureau of Cannabis Control posts a notice on its website or otherwise publicly announces that state licensing authorities have commenced issuing State Licenses, or (ii) the applicable date upon which a Person with a City License must obtain a State License to comply with State Law.

(aaa) “**State Licensee**” means a Person that has been issued a State License.

(bbb) “**Testing**” means the laboratory Testing of the quality, makeup or purity of Cannabis and Cannabis Products as required by applicable State Law.

(ccc) “**Testing Permit**” means a City Permit for Testing pursuant to the terms and conditions of this Chapter and the conditions of approval for the applicable City Permit issued to the particular Testing Permittee. Such Permits shall be associated with State License 8 or such other Testing license types created by the State

(ddd) “**Testing Permittee**” means a Person who has been issued a Testing Permit by the City pursuant to the terms and conditions of this Chapter.

(eee) “**Transport**” or “**Transportation**” means the transfer of Cannabis or Cannabis Products between one or more Cannabis Permittee.

(fff) “**Volatile Solvent**” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures..

XX.03 Commercial Cannabis Activity Prohibited. All Commercial Cannabis Activity within the City is prohibited except as permitted by this Chapter.

XX.04 Commercial Cannabis Activity Conditionally Permitted. Commercial Cannabis Activity is conditionally permitted in the City only as expressly specified in this Chapter.

XX.05 Business standards. Commercial Cannabis Activity within the City shall be in conformance with the following standards:

[Governing Structure Alternative 1 – Create a governing board/permitting authority or standalone department] *[Drafting Note: Insert definition - “Board” means the Board of Cannabis Regulation, as established by Section XX.05.]*

(a) The Board shall consist of 5 members to be nominated by the mayor/chair and confirmed by the city council. The members of the board shall consist of:

- (1) One representative from the Cannabis industry
- (2) One representative from the police department
- (3) One representative from the medical field
- (4) One qualified patient or primary Cannabis caregiver
- (5) One representative from the City Council

(b) The composition of the Board may be changed by a majority vote of the City Council.

(c) The Board shall have the duty and authority to administer and enforce the provisions of this chapter.

(d) Subject to the approval of City Council, the Board may hire staff, including but not limited to an executive director, as necessary and appropriate, to administer and enforce this chapter.

(e) Commercial Cannabis Activity shall only be allowed upon application and issuance of a City Permit and a CUP by the Board in accordance with the criteria and process set forth in this Chapter and City Code. The Board may approve applications or operations that vary from the criteria set forth in this Section and City Code to further achieve the aims of City Code and the City. **[End of Governing Structure Alternative 1]**

[Governing Structure Alternative 2 – Utilize the local governments existing structures, e.g. City Manager]

(f) Commercial Cannabis Activity shall only be allowed upon application and issuance of a City Permit and a CUP by the City in accordance with the criteria and process set forth in this Chapter and City Code. The City Manager or the City Manager’s designee may approve applications or operations that vary from the criteria set forth in this Section and City Code to further achieve the aims of City Code and the City. **[End of Governing Structure Alternative 2]**

(g) Zoning and Land Use.

(1) Prohibition Near Schools. Following the enactment of this Chapter, no new Cannabis Premise shall be located within 600 feet of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued. All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Cannabis Premise is, or will be, located to the nearest property line of those uses describe in this Subsection. The restrictions set forth in this Subsection shall not apply to any Cannabis Premise which is located within 600 feet of any school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center if such Cannabis Premise existed prior to the establishment of the applicable school, day care center or youth center that is located within 600 feet of such Cannabis Premise. [*Drafting Note:* This language matches the requirements set forth under MAUCRSA.]

(2) Co-Location. All Commercial Cannabis Activity shall fully comply with all mandates set forth in State Law. To the extent not prohibited under State Law, a City Permit may be located within the same unit of the same Cannabis Premises or building, facility or real property parcel as another City Permit.

(3) Conditional Use Permits.

a) Prior to commencing operations, all City Permittees shall obtain a CUP from the City for all parcels of real property (or portion thereof) upon which the City Permittee has a Cannabis Premises.

b) All Cannabis Premises shall be operated in accordance with the conditions of approval associated with the applicable CUP for the specified parcel of real property (or sub-portion thereof) upon which the Cannabis Premises is located.

c) Prior to the issuance of a CUP on a permanent basis, the City Manager may issue a temporary use permit to enable a City Permittee to commence operations.

d) Except as specified in Section XX.12, Commercial Cannabis Activities shall not exceed the square footage authorized pursuant to the applicable CUP.

e) Unless otherwise approved by the City Manager, all Cannabis Premises shall be located in the Permit Zone applicable to such type of City Permit.

(h) Subject to the further requirements of this Chapter, and in accordance with the MAUCRSA and Division 10, commending with Section 2600 of Business and Professions Code, at a minimum the following State License classification types will be allowed within the City:

(1) Type 1A—Cultivation; Specialty Indoor; Small.

(2) Type 1B—Cultivation; Specialty mixed-light; Small.

(3) Type 1C—Cultivation; Specialty cottage; Small.

(4) Type 2A—Cultivation; Indoor; Small.

(5) Type 2B—Cultivation; Mixed-light; Small.

- (6) Type 3A—Cultivation; Indoor; Medium.
 - (7) Type 3B—Cultivation; Mixed-light; Medium.
 - (8) Type 4—Cultivation; Nursery.
 - (9) Type 5A—Cultivation; Indoor; Large.
 - (10) Type 5B—Cultivation; Mixed-light; Large.
 - (11) Type 6—Manufacturer 1.
 - (12) Type 7—Manufacturer 2.
 - (13) Type 8—Testing laboratory.
 - (14) Type 10—Retailer.
 - (15) Type 11—Distributor.
 - (16) Type 12—Microbusiness.
- (i) Unless determined by the City Manager that cross-permitting would negatively impact public safety or an applicant or City Permittee elects otherwise, all City Permits issued pursuant to this Chapter are for both commercial Adult-Use Cannabis activity and commercial Medicinal Cannabis activity. City Permittees must conduct Commercial Cannabis Activity associated with Adult-Use Cannabis and Medicinal Cannabis in accordance with this Chapter and State Law.
- (j) An applicant for a City Permit or City Permittee may elect to conduct only commercial Adult-Use Cannabis activity or only commercial Medicinal Cannabis activity.
- (1) In such case, the applicant or City Permittee must inform the City in writing if they will be conducting only commercial Adult-Use Cannabis activity or only commercial Medicinal Cannabis activity.
 - (2) If an applicant or City Permittee elects or the City Manager requires an applicant or City Permittee to conduct only commercial Adult-Use Cannabis activity or only commercial Medicinal Cannabis activity, the City Permit shall bear a clear designation indicating whether the Permit is for commercial Adult Use Cannabis activity as distinct from commercial Medicinal Cannabis activity (or vice versa) by prominently affixing an “A” or “M,” respectively. Examples of such a designation include, but are not limited to, “A-Type 1A” or “M-Type 1A.” Except as specified in this Chapter or State Law, the requirements for A-Permits and M-Permits shall be the same. Testing Permittees may test both Adult Use Cannabis and Medicinal Cannabis.
- (k) Commercial Cannabis Activity is allowed only within Fully Enclosed and Secure Structures that are inaccessible to minors.
- (l) From any public right-of-way, there shall be no visible evidence of the consumption of any Cannabis Products. Commercial Cannabis Activity shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.

- (m) Except as specified in Section XX.12, there is no set restriction on the hours of operation of Commercial Cannabis Activities at Cannabis Premises; however, restricted hours of operation may be established as a condition of approval of a City Permit or the applicable CUP issued by the City.
- (n) All Cannabis and Cannabis Products shall be kept in a secured manner during all business and nonbusiness hours.
- (o) All City Permittees shall locate their business within a Cannabis Premises that is compliant with all applicable State Laws and local laws.
- (p) City Permittees must pay all applicable taxes pursuant to all federal, State, and local laws, including the City Code.
- (q) City Permittees shall provide sufficient odor absorbing ventilation and exhaust systems so that odors outside the applicable Cannabis Premises are not a nuisance on any adjacent property of public right-of-way. Any violation of this Section shall be remedied within thirty (30) days of the City Permittee receiving notice of such violation.
- (r) City Permittees shall utilize product and inventory tracking software and accounting software that is in-line with State Law and reasonable business practices within the industry.
- (s) Except as specified in Section XX.12, on-site smoking, ingestion, or consumption of Cannabis, Cannabis Products or alcohol shall be prohibited on Cannabis Premises. Except to the extent otherwise permitted pursuant to Section XX.12, the entrance of the Cannabis Premises shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming Cannabis, Cannabis Products or alcohol on such Cannabis Premises is prohibited.
- (t) Signage for all Cannabis Premises shall be in compliance with the City's sign code.
- (u) Alcoholic beverages and tobacco shall not be sold, stored, distributed, or consumed on the Cannabis Premises. City Permittees shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages or tobacco with respect to the Cannabis Premises. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the Cannabis Premises.
- (v) Physician Services shall not be provided at any Cannabis Premises.
- (w) The Cannabis Premises shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building City Codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and MAUCRSA.
- (x) Each City Permittee shall provide the City Manager, or the City Manager's designee, with the name, phone number, facsimile number, and email address of an on-site representative of such City Permittee to whom the City and the public can provide notice if there are any operational problems associated with such City Permittee's Cannabis Premises. Each City Permittee shall make reasonable and good faith efforts to encourage

residents and the public to call this representative to resolve any operational problems before any calls or complaints are made to the City or law enforcement.

(y) All Cannabis Premises shall have a security plan that satisfies the following requirements:

(1) Security cameras shall be installed and maintained in good condition at all times. The areas to be covered by the security cameras include, but are not limited to sale, Cultivation, Manufacturing, processing, and Distribution areas, all doors and windows, and any other areas as reasonably determined by the City Manager or the City Manager's designee. Requirements for the camera system include:

- a) The cameras shall be in use 24 hours per day, seven days per week.
- b) The applicable City Permittee shall maintain at least 120 concurrent hours of digitally recorded documentation
- c) Any disruption in security camera images shall be cured expeditiously in good faith.
- d) With respect to enclosed and secure spaces utilized solely for Cultivation and to avoid damaging the light cycles of Cannabis crops, cameras that do not utilize infrared or other supplemental light may be utilized provided that such Cultivation space is fully locked and secured with a keypad, keycard, smartlock or other system which records the time and identity of those accessing such Cultivation space.

(2) Cannabis Premises shall be secured with an alarm system that is operated and monitored by an independent third party security company.

(3) Entrance to the Cannabis Premises, and all storage areas therein, shall be locked at all times, and under the control of the Cannabis Premise's staff.

(4) The entrances and all window areas shall be illuminated during evening hours. The Cannabis Premises shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etcetera, and shall secure the necessary lighting approvals and permits as needed.

(5) All windows on the Cannabis Premises shall be appropriately secured and all Cannabis securely stored.

(6) Recordings made by the security cameras shall be made available to the City Manager, the City Manager's designee, or law enforcement upon verbal request—no search warrant or subpoena shall be needed to view the recorded materials.

(z) City Code enforcement or law enforcement officers are authorized to conduct reasonable inspections of the Cannabis Premises of City Permittees. Except to the extent otherwise specified by this chapter, inspections are subject to the rules and restrictions regarding inspection of businesses pursuant to the City Code.

(aa) City Code enforcement or law enforcement officers shall have the right to enter the Cannabis Premises at any time, unannounced, for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter and all City laws and State Law. To ensure security, such right shall be subject to the applicable party being able to

present the applicable City Permittee a valid identification showing that they are the appropriately designated officers with jurisdiction in the City.

(bb) Pursuant to this Section XX.05, the City, City Manager, law enforcement and other agents and employees of the City (collectively, the “**City Parties**”) shall have access to Cannabis Premises, video footage, business records, data, inventory levels and information relating to customers, vendors, products, plans and agreements (collectively, “**Confidential Information**”). To the extent Confidential Information is viewed or possessed by any City Parties, the City Parties shall, to the maximum extent possible, keep such Confidential Information confidential, not disclose the Confidential Information to any third parties, and shall only use the Confidential Information for purposes specified in this Ordinance or other laws and regulations of the City related to the City Permittees from whom such Confidential Information has been received. Notwithstanding the foregoing, the City may disclose Confidential Information: (i) as may be required by the California Public Records Act or pursuant to a valid subpoena or court order, provided, however, that the City shall first notify the applicable City Permittee and provide the City Permittee with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information, and (ii) in connection with any City enforcement proceeding relating to compliance with the City’s Municipal Code and this Section, but only to the extent the Confidential Information is relevant to the proceeding.

XX.06 Application requirements.

(a) All applicants wishing to obtain a City Permit from the City shall file an application with the City upon a form provided by the City and shall pay a permit application fee as established by the City. The fee may vary depending on the type of City Permit. An application for a City Permit shall include at least the following information:

- (1) The address of the applicant’s headquarters.
- (2) The size of the proposed Cannabis Premises.
- (3) The address of the location for which the City Permit is sought.
- (4) A site plan and floor plan for the proposed Cannabis Premises denoting the use of all areas on the Cannabis Premises, including storage, areas, lighting, signage, etcetera.
- (5) A proposed security plan in compliance with the standards in this Chapter.
- (6) The names, addresses, and relevant criminal histories of those with an ownership interest of twenty percent (20%) or more and any Person who will be a facility manager or otherwise responsible for the Commercial Cannabis Activity at the Cannabis Premises (collectively, the “**Applicant’s Agents**”). Relevant criminal histories shall include any felony convictions, the nature of such offenses, and the sentences received for such convictions.
- (7) The name and address of the owner and lessor of the real property upon which the Cannabis Premises is proposed to be located. In the event the applicant is not the legal owner of the property, the application must be accompanied with a signed acknowledgement from the owner of the property that Commercial Cannabis Activity will occur on the property. The actions of a lessor who, in good faith,

allows his or her property to be used by a City Permittee, its employees, and its agents, as allowed pursuant to a State License and this chapter, are not unlawful shall not be an offense subject to arrest, prosecution, or other sanction under this chapter, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under this Chapter.

- (8) Authorization for the City Manager or the City Manager's designee to seek verification of the information contained within the application.
 - (9) Evidence that the Cannabis Premises will be located in a Cannabis Premises that is compliant with all applicable State Laws and City laws.
 - (10) A statement in writing by the applicant that the applicant certifies under penalty of perjury that all the information contained in the application is true and correct.
 - (11) Any such additional and further information as is deemed necessary by the City Manager or the City Manager's designee to administer this Chapter.
- (b) The City Manager or the City Manager's designee shall conduct a background check of any applicant seeking a City Permit, including the Applicant's Agents, and shall prepare a report on the acceptability of the applicant and the Applicant's Agents and the suitability of the proposed location of the Cannabis Premises.
- (c) The City Manager or the City Manager's designee shall rank all qualified applications in order of those that best satisfy the requirements of this Chapter and provide the highest level of service and opportunities for residents of the City based on the requirements of this Section and, but not limited to, the following criteria (the "**Merit List**"):
- (1) The operational plan for the Cannabis Premises.
 - (2) The security plan for the Cannabis Premises.
 - (3) The experience of the operators of the Cannabis Premises with respect to Cannabis businesses.
 - (4) The adequacy of capitalization for the City Permittee and its operations.
 - (5) The employment of City residents and other public benefits to the City.

XX.07 Permit Conditions.

- (a) A City Permit application may be denied and not awarded by the City if:
- (1) The applicant or the Applicant's Agents made one or more false or misleading statements or omissions in the application or during the application process.
 - (2) The proposed Cannabis Premises or Commercial Cannabis Activity at the Cannabis Premises is not allowed by State Law or City law.
 - (3) The applicant is not a legal representative of the proposed City Permittee.
 - (4) The applicant or the Applicant's Agents have been convicted of a felony, or a misdemeanor involving moral turpitude, or the illegal use, possession, distribution, Transportation, or any such similar activity related to controlled substances, with the exception of Cannabis related offenses for which the conviction occurred prior to passage of Compassionate Use Act of 1996 (Proposition 215), found at Section

11362.5 of the Health and Safety Code. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

- (5) The applicant or the Applicant's Agents have engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
- (6) The applicant has not been or is not in good standing with the city related to other or previous business activities operated in the city.
- (7) The applicant has not satisfied all requirement of this Chapter.

(b) A City Permit shall be awarded by the City to applicants in order of the Merit List as established by the City Manager or the City Manager's designee. The number of City Permits shall be limited to those that may be reasonably accommodated within the appropriate city Permit Zone as determined by the City Manager or the City Manager's designee provided that at no time shall there be less than:

- (1) One (1) Retail Permittee per 10,000 residents in the City.
- (2) One (1) Cultivation Permittee per 20,000 residents in the City.
- (3) One (1) Manufacturing Permittee per 20,000 residents in the City.
- (4) Sufficient Distribution Permits to enable each Manufacturing Permittee or Processing Permittee to also distribute and Transport the Cannabis and Cannabis Products such Cannabis Permittee produces at a commercially reasonable price.

(c) Before a City Permit can be issued to an applicant, a City Permit fee must be paid to offset all related costs to the City and provide plans for the Cannabis Premises that meet the requirements set forth in the City Code.

(d) Each City Permit is subject to the conditions of approval in the applicable CUP for the parcel of real property upon which the Cannabis Premises is located.

(e) Each City Permit is subject to any additional conditions that may be applied by the City at the time of issuance or renewal as necessary to properly regulate the applicable Commercial Cannabis Activities and to protect the public.

(f) Each City Permittee shall:

- (1) Carry liability insurance in an amount commensurate with similarly situated businesses, and name the City as an additional insured on all such insurance policies.
- (2) Execute an Indemnification Agreement prepared by the City that fully indemnifies the City for all liabilities associated with the City Permit, the City Permittee's Commercial Cannabis Activities, and any action taken by the City Permittee pursuant to this Chapter.
- (3) Defend the City, at the City Permittee's sole expense, in any action against the City or its agents, officers, or employees associated with the City Permit, the City Permittee's Commercial Cannabis Activities, or any action taken by the City Permittee pursuant to this Chapter. The City may, at its sole discretion, participate

in the defense of any such action, but such participation shall not relieve the City Permittee of its indemnification and reimbursement obligations.

- (4) Reimburse the City for all costs, expenses, fees, and attorney fees incurred by the City related to any action against the City or its agents, officers, or employees associated with the City Permit, the City Permittee's Commercial Cannabis Activity, or any action taken by the City Permittee pursuant to this Chapter.

(g) A City Permittee shall keep the City and law enforcement updated with the names, addresses, and relevant criminal histories of the Applicant's Agents. Relevant criminal histories shall include any drug-related or felony convictions, the nature of such offenses, and the sentences received for such convictions.

(h) In order for a City Permittee to transfer its City Permit to any Person, such City Permittee must submit a transfer application to the City Manager or City Manager's designee. The City Manager or the City Manager's designee shall create a transfer application and reasonable transfer application process that City Permittees and the City must follow for City Permit transfer requests. Each transfer request of a City Permit and the related transfer application is subject to the prior approval of the City Manager or the City Manager's designee.

(i) A City Permit shall expire and be null and void twelve (12) months after issuance to the City Permittee unless properly renewed. Upon payment of the applicable City Permit fees, and passing the requisite inspections, a City Permittee that has maintained compliance with all City, State, and other applicable Cannabis and business related laws shall be entitled to automatically renew its City Permit subject to all prevailing laws at the time of renewal. **[Drafting Note:** Given the ability to inspect and revoke licensure for violations, extending the period of the City Permit may (i) reduce administrative paperwork and (ii) serve as added incentives for operators to come to the jurisdiction. We have seen a move towards 2-year periods.]

(j) To the fullest extent permitted by law, the City does not assume any liability, and expressly does not waive sovereign immunity, with respect to any Commercial Cannabis Activities, or for the other activities of any City Permittee or for any other activities taking place at Cannabis Premises.

XX.08 Enforcement.

(a) Any Commercial Cannabis Activity within the City in violation of this Chapter is hereby declared to be unlawful and a public nuisance.

(b) Any Person who willfully or knowingly (i) engages in a violation of this Chapter or (ii) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this Chapter is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this Chapter.

(c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists.

(d) Any Person in violation of any provision of this Chapter or who causes another Person to be in violation of this Chapter shall have committed a misdemeanor. In addition, such

violation may be punishable by a fine of up to one thousand dollars (\$1,000) for each violation and for each day the applicable violation continues to persist.

(e) Any Person in violation of any provision of this Chapter may be subject to an administrative fine of up to a \$1,000 per offense.

(f) Any material violation of this Chapter or any other relevant City law or State Law by a City Permittee, or a City Permittee's agent, is grounds for revoking the relevant City Permit. In addition, the City Manager or the City Manager's designee may revoke a City Permit if any of the following occur:

- (1) The City Manager or the City Manager's designee determines that the City Permittee has failed to comply with this Chapter, any condition of approval, or any agreement or covenant as required pursuant to this Chapter.
- (2) The City Permittee's Commercial Cannabis Activities cease for more than ninety (90) calendar days.
- (3) The City Permittee fails to obtain a State License by the State License Deadline.
- (4) Ownership of the City Permittee is changed or transferred to a third party, without approval from the City Manager or the City Manager's designee.
- (5) The Cannabis Premises fails to materially comply with its approved security plan pursuant to Section XX.05.(y).
- (6) The City Permittee fails to provide remote access to the security cameras to the City Manager, the City Manager's designee, or the Chief of Police, or fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.

(g) Any decision regarding the revocation of a City Permit may be appealed to an independent neutral third party administrative hearing officer appointed by the City Manager or the City Manager's designee (such party, the "**Hearing Officer**"). Said appeal shall be made by a notice of appeal from the Person appealing within thirty (30) days from the date of the decision to revoke the City Permit. The appeal shall be accompanied by a written verified declaration setting forth the basis for the claim that the City Permit was improperly revoked. The Hearing Officer's decision shall be final and binding upon the City and the appellant City Permittee.

(h) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

XX.09 State License Requirement.

(a) City Permittees who are granted a City Permit must obtain a State License on or prior to the later of (i) the State License Deadline, or (ii) such other date as established by the City Manager or the City Manager's designee.

(b) The City may issue City Permits prior to the issuance of State Licenses, however Commercial Cannabis Activity for Adult-Use Cannabis is prohibited prior to January 1, 2018. Until such time, City Permittees shall operate as M-Permittees only.

(c) Prior to January 1, 2018, a City Permittee may conduct Commercial Cannabis Activity involving Medicinal Cannabis in accordance with this Chapter and State Law, including but not limited to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code and Health and Safety Code Section 11362.775.

(d) A City Permittee shall not conduct Commercial Cannabis Activity at its Cannabis Premises following the State License Deadline if such City Permittee fails to obtain the applicable State License on or prior to the State License Deadline.

(e) On or prior to the State License Deadline or at such time as established by the City, each City Permittee must provide proof of receipt of the applicable State License by such City Permittee to the City Manager or the City Manager's designee.

(f) Except as otherwise set forth in this Ordinance, there shall be no prohibitions or restrictions on a M-Permittee obtaining and holding an A-Permit in any classification type. Except as otherwise set forth in this Ordinance, there shall be no prohibitions or restrictions on an A-Permittee obtaining and holding a M-Permit in any same classification type.

(g) *[Drafting Note: This is a priority provision for M-Permittees in the event the City has already issued M-Permits prior to A-Permits and desires to give priority to such M-Permittees. We would recommend caution with the use of such a provision to ensure a process focused on quality.]* [The applications of M-Permittees, which have operated in compliance with and are in good standing with the City Code, for City Permits for Commercial Cannabis Activities for Adult Use Cannabis shall be prioritized over all other Persons' applications for the same City Permit classification type.]

(h) To the extent not prohibited under State Law, a City Permittee may engage in Commercial Cannabis Activity with City Permittees holding a M-License (or M-Permit) or A-License (or A-Permit) or Cannabis Permittees located in other jurisdictions within the State.

XX.10 Cannabis Commercial Cultivation.

(a) **Purpose.** The purpose and intent of this Section is to permit and regulate the Commercial Cannabis Activity of Cultivation in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA.

(b) **Scope; Medicinal Cannabis and Adult Use Cannabis.** This Section permits and regulates the Commercial Cannabis Activity of Cultivation of Cannabis pursuant to State Law, including MAUCRSA. Subject to the terms of this Chapter, Cultivation Permits may be issued by the City for the Cultivation Cannabis pursuant to and in accordance with State Law, including MAUCRSA.

(c) Cultivation is a conditionally permitted use only on properties within the applicable Permit Zone.

(d) Cultivation may include growing Cannabis plants, harvesting Cannabis plants, and drying Cannabis flowers, but shall not include the Manufacturing of Cannabis Products.

(e) In addition to the security requirements of Section XX.05, entrance to the Cultivation area, and all storage areas, of the applicable Cannabis Premises shall be locked at all times, and under the control of the staff of such Cannabis Premises.

(f) The City may authorize pursuant to a CUP, on an interim basis or on a permanent basis, the Cultivation of Cannabis in a Modular Building that meets or substantially meets the requirements of this Chapter.

(g) Any Person who is granted a City Permit pursuant to this Section may apply for and automatically be granted a Distribution Permit for the Cannabis Premises licensed pursuant to this Section, provided that the following requirements are met:

(1) Such automatic Distribution Permit shall only enable the applicable City Permittee to Distribute Cannabis and Cannabis Products produced at the Cannabis Premises permitted pursuant to this Section or the Cannabis or Cannabis Products Cultivated or Manufactured by the affiliates of such Person.

(2) The City Permittee is in compliance with Section XX.13 of this Chapter and any applicable requirements in State Law pertaining to Distribution. Any Distribution Permit granted pursuant to this Section may be subject to revocation by the City in the event of a violation of State Law with respect to Distribution conducted by such City Permittee.

XX.11 Cannabis Manufacturing.

(a) **Purpose.** The purpose and intent of this Section is to permit and regulate the Manufacturing of Cannabis Products to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA.

(b) **Scope; Medicinal Cannabis and Adult Use Cannabis.** This Section permits and regulates the Commercial Cannabis Activity of Manufacturing of Cannabis Products pursuant to State Law, including MAUCRSA. Subject to the terms of this Chapter, Manufacturing Permits may be issued by the City for the Manufacturing of Cannabis Products pursuant to and in accordance with State Law, including MAUCRSA.

(c) The Manufacturing of Cannabis Products is a conditionally permitted use only on properties within the applicable Permit Zone.

(d) A Manufacturing Permittee must employ at least one (1) full time quality control personnel.

(e) The Manufacturing Permittee must establish standard operating procedures and batch records that comply with current good manufacturing practices and applicable State Law, including MAUCRSA.

(f) All finished Cannabis Products produced by a Manufacturing Permittee must be labeled in compliance with applicable State Law, including MAUCRSA.

(g) All finished Cannabis Products produced by a Manufacturing Permittee must be packaged in child resistant containers prior to leaving the Cannabis Premises for such Manufacturing Permittee in accordance with applicable State Law, including MAUCRSA.

(h) Manufacturing Permittees may conduct Manufacturing of Cannabis Products using any type of solvents, including Volatile Solvents, or Manufacturing processes if such Manufacturing complies with the requirements of this Chapter and State or local law, including but not limited to Health and Safety Code Section 11362.775 (or any successive State Law) all applicable fire and building codes in the City and any other laws of the City designed to ensure the safety of such operation.

(i) Manufacturing Permittees using Volatile Solvents for Manufacturing Cannabis Products must operate in a manner to reduce the risk of explosion or danger to public health, including through the use of a close-loop or solvent dispersion system consistent with the requirements of Health and Safety Code Section 11362.775 (or any successive State Law).

(j) The City may authorize pursuant to a CUP or temporary CUP, on an interim basis or on a permanent basis, the Manufacturing of Cannabis Products in a Modular Building that meets or substantially meets the requirements of this Chapter.

(k) Any Person who is granted a City Permit pursuant to this Section may apply for and automatically be granted a Distribution Permit for the Cannabis Premises licensed pursuant to this Section, provided that the following requirements are met:

- (1) Such automatic Distribution Permit shall only enable the applicable City Permittee to Distribute Cannabis and Cannabis Products produced at the Cannabis Premises permitted pursuant to this Section or the Cannabis or Cannabis Products Cultivated or Manufactured by the affiliates of such Person.
- (2) The City Permittee is in compliance with Section XX.13 of this Chapter and any applicable requirements in State Law pertaining to Distribution. Any Distribution Permit granted pursuant to this Section may be subject to revocation by the City in the event of a violation of State Law with respect to Distribution conducted by such City Permittee.

XX.12 Cannabis Retailers.

(a) **Purpose.** The purpose and intent of this Section is to regulate the retail sale and Delivery of Cannabis and Cannabis Products in order to promote the health, safety, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA.

(b) **Scope; Medicinal Cannabis and Adult Use Cannabis.** This Section permits and regulates the Commercial Cannabis Activity of retail selling and Delivering of Cannabis and Cannabis Products pursuant to State Law, including MAUCRSA. Subject to the terms of this Chapter, Retail Permits may be issued by the City for retail selling and Delivering of Cannabis and Cannabis Products pursuant to and in accordance with State Law, including MAUCRSA.

(c) Retail selling and Delivering of Cannabis and Cannabis Products is a conditionally permitted use only on properties within the applicable Permit Zone.

(d) The Commercial Cannabis Activity of retail selling and Delivering of Cannabis and Cannabis Products may only include the selling and Delivering of Cannabis and Cannabis Products by a Retail Permittee to a customer, patient or primary caregiver.

- (e) Retailer Stores shall only be operated between the hours of 6:00 a.m. and 9:00 p.m. or as otherwise established as a condition of approval of the applicable Retailer Permit or the applicable CUP for such Retail Permittee. Delivery shall be permitted to continue until 12:00 a.m. midnight.
- (f) On-site smoking, ingestion, or consumption of Cannabis, Cannabis Products or alcohol shall be prohibited on the Cannabis Premises of all Dispensaries except for Cannabis and Cannabis Products used by customers or qualified patients in well ventilated private lounges that are partitioned off from access to all other areas of the Retail Establishment, are designed to prevent the flow of smoke to any other area of the Retail Establishment, and are otherwise operated in compliance with applicable State Law. The entrance of the Cannabis Premises for the Retail Establishment shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming Cannabis, Cannabis Products or alcohol on the premises is prohibited except in designated lounges that comply with the mandates of this Subsection.
- (g) In addition to the requirements of Section XX.05, Retail Permittees shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing Cannabis and Cannabis Products and theft of Cannabis and Cannabis Products from the Retail Establishment.
- (h) All Cannabis and Cannabis Products shall be stored in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, or loss.
- (i) Individuals shall not be allowed to remain on the Cannabis Premises comprising of the Retail Establishment unless they are engaging in activity expressly related to the operations of the Retail Establishment or are a customer.
- (j) A Retail Permittee shall notify the City Manager or the City Manager's designee within 24 hours of discovering any of the following:
- (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the City Manager or the City Manager's designee.
 - (2) Diversion, theft, loss, or any criminal activity involving the Retail Establishment or any agent or employee of the Retail Establishment.
 - (3) The loss or unauthorized alteration of records related to Cannabis, Cannabis Products, registered qualifying patients, primary caregivers, or Retail Establishment agents or employees.
 - (4) Any other material breach of security.
- (k) The retail sale and Delivery of Cannabis and Cannabis Products by Retail Establishments shall comply with all State and local Law, including all laws requiring presentment of government-issued identification card, physician's recommendation or medical Cannabis identification card at the time of initial purchase.
- (l) With respect to Medicinal Cannabis, physician's recommendations shall be verified by a Retail Permittee prior to selling or Delivering any Medicinal Cannabis to a qualified patient or primary caregiver, and at least every six months thereafter.

- (m) A Retail Establishment may not employ or enter into any agreements with any physicians who recommend Medicinal Cannabis.
- (n) A Retail Permittee shall inspect all Cannabis and Cannabis Products received for quality assurance prior to selling or Delivering to any Person.
- (o) Each Retail Establishment shall sell and Deliver Cannabis and Cannabis Products only after such Cannabis and Cannabis Products have been inspected and quality tested in accordance with applicable State Law, including MAUCRSA.
- (p) Each Retail Establishment shall do regular monthly inventories, and shall record the total quantity of Cannabis and Cannabis on the Cannabis Premises. These records shall be maintained for three years from the date created and shall be open to inspection by the City Manager, the City Manager's Designee, and law enforcement.
- (q) A Retail Permittee shall register with the City each location where Cannabis or Cannabis Products are stored for purposes of selling or Delivering by such Retail Permittee within the City.
- (r) A Retail Establishment shall maintain customer and patient and other business records in a secure location (including electronically or cloud-based) that is compliant with, as applicable, HIPAA and other federal and state privacy laws.
- (s) During the Delivery of Cannabis or Cannabis Products, each vehicle driver shall carry a copy of the Retail Permit, a copy of the Delivery request, a form of government-issued identification, and all other information required by State and local Law. The driver shall present these documents upon the request of law enforcement, the City Manager, or the City Manager's designee.
- (t) Prior to sale at a Retail Establishment, Cannabis and Cannabis Products shall be labeled and placed in a tamper-evident package. Labels and packages of Cannabis and Cannabis Products shall, at minimum, meet the requirements specified under Business and Professions Code Section 26120 and other applicable State Law.
- (u) A Retail Permittee may opt to only provide Delivery service from the applicable Retail Establishment and not offer the sale of Cannabis or Cannabis Products on the premises of the Retail Establishment.
- (v) All Cannabis Delivery vehicles shall:
 - (1) Be equipped with, and utilize, a vehicle alarm system.
 - (2) Have and utilize a direct communication system with the related Retail Establishment.
 - (3) Keep all Cannabis and Cannabis Products in a secure and locked container.
 - (4) Have an internal partition between the driver and all passengers from the Cannabis and Cannabis Products storage containers that prevents access by the driver and passengers to all Cannabis products from inside the vehicle.
 - (5) Not carry more Cannabis and Cannabis Products than allowed by State and local Law and required to fulfill all immediate Delivery requests.

XX.13 Cannabis Distribution.

(a) **Purpose.** The purpose and intent of this Section is to permit and regulate the Distribution of Cannabis and Cannabis Products in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA .

(b) **Scope; Medicinal Cannabis and Adult Use Cannabis.** This Section permits and regulates the Commercial Cannabis Activity of Distribution of Cannabis and Cannabis Products by Distribution Permittees pursuant to State Law, including MAUCRSA. Subject to the terms of this Chapter, Distribution Permits may be issued by the City for the Distribution of Cannabis and Cannabis Products pursuant to and in accordance with State Law.

(c) Distribution of Cannabis and Cannabis Products by a Distribution Licensee is a conditionally permitted use only on properties within the applicable Permit Zone.

(d) Notwithstanding anything to the contrary in this Ordinance and in accordance with BPC Section 26110(h), a City Permittee shall not be required to sell Cannabis or Cannabis Products to a Person with a Distribution Permit or a State Licensee holding a license for Distribution, and any City Permittee may directly contract for sale with any Cannabis Permittee authorized to sell Cannabis and Cannabis Products to customers, patients and primary caregivers pursuant to State Law.

(e) Except for Transportation, Distribution activities at the applicable Cannabis Premises shall not exceed the square footage authorized for such Distribution Activities pursuant to the applicable CUP.

(f) A Distribution Permittee shall inspect all Cannabis and Cannabis Products received by it for quality assurance prior to Distribution, as required under applicable State Law.

(g) In addition to the application requirements in Section XX.06, a Distribution Permittee shall register with the City each location within the City where Cannabis and Cannabis Products are stored for purposes of Distribution activities within the City.

(h) For the avoidance of doubt, a Distribution Permittee may also hold any other Permit type to the extent permitted by State Law.

XX.14 Cannabis Transportation.

(a) **Purpose.** The purpose and intent of this Section is to regulate the Transportation of Cannabis and Cannabis Products in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to MAUCRSA.

(b) Transportation of Cannabis and Cannabis Products within the City is approved for all Cannabis Permittees acting in compliance with State law and the City acknowledges that the prohibition of such Transport would be in contravention of BPC Section 26080.

(c) Transportation activities includes the Transportation of Cannabis and Cannabis Products between Cannabis Permittees.

(d) Prior to the State License Deadline, Cannabis Permittees acting in accordance with applicable state and local laws may Transport Cannabis and Cannabis Products.

(e) Following the State License Deadline, the Transportation of Cannabis and Cannabis products shall only be conducted by Persons holding a State License for Type 11 (Distribution) or Type 12 (Microbusiness) or employees of those Persons.

(f) Notwithstanding any other law, all vehicles transporting Cannabis and Cannabis Products for hire shall be required to have a valid motor carrier permit pursuant to Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code.

XX.15 Cannabis Testing.

(a) **Purpose.** The purpose and intent of this Section is to permit and regulate the Testing of Cannabis and Cannabis Products prior to the retail sale of such products to the public in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City intends to be on the forefront of Cannabis research and Testing. The City is authorized to regulate this activity pursuant to MAUCRSA.

(b) **Scope; Medicinal Cannabis and Adult Use Cannabis.** This Section permits and regulates the Commercial Cannabis Activity of Testing of Cannabis and Cannabis Products pursuant to State Law, including MAUCRSA. Subject to the terms of this Chapter, Testing Permits may be issued by the City for the Testing of Cannabis and Cannabis Products pursuant to and in accordance with State Law, including MAUCRSA.

(c) Testing of Cannabis and Cannabis Products is a conditionally permitted use only on properties within the applicable Permit Zone.

(d) Each Cannabis Premises for Testing must employ at least one (1) full time quality control personnel.

(e) Testing Permittees must operate, and all Cannabis and Cannabis Products must be properly tested by Testing Permittees, in accordance with applicable State Law, including but not limited to Chapter 10, commencing with Section 26101, of Division 10 of the Business and Professions Code (or any successive provisions).

(f) All Testing devices used by a Testing Permittee must be UL listed, or otherwise approved for the intended use by the City's Building Official, the Fire Department or other Person designated by the City Manager.

(g) Each Testing Permittee must notify the State Department of Public Health and the City Manager, or the City Manager's designee, within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

XX.16 Taxation.

[Taxation Alternative 1 – Gross Tax Option]

(a) Pursuant to Measure [____], approved by the voters of the City on [____], the City Council is authorized to impose excise taxes, with no termination date, on each City Permittee operating within the City in an amount of not more than [four (4) percent] of the Gross Receipts earned within the City.

(b) The excise tax shall initially be set at the following rates:

(1) two (2) percent on Gross Receipts for Manufacturing Permittees.

(2) two (2) percent on Gross Receipts for Cultivation Permittees.

(3) two (2) percent on Gross Receipts for Retail Permittees.

(c) To the extent a City Permittee holds more than one type of City Permit for Commercial Cannabis Activities which are subject to excise taxes pursuant to this Section, the excise tax applicable to a City Permit type shall only apply to that portion of such City Permittee's Commercial Cannabis Activity which is authorized by the applicable City Permit type. So, for example, if a City Permittee holds a Manufacturing Permit and a Cultivation Permit, the excise tax applicable to Cultivation Permittees shall only apply to the portion of such City Permittee's Commercial Cannabis Activities which are deemed Cultivation at its applicable Cannabis Premises, and the excise tax applicable to Manufacturing Permittees shall only apply to the portion of such City Permittee's Commercial Cannabis Activities which are deemed Manufacturing at its applicable Cannabis Premises.

(d) The excise taxes due pursuant to this Section shall be due and payable on a calendar quarterly basis within thirty (30) days following the end of the applicable calendar quarter. Failure to pay excise taxes in a timely manner may result in the suspension of the applicable City Permit until such time as the excise taxes have been paid.

(e) In connection with the payment of excise taxes pursuant to this Section, each City Permittee shall provide sufficient books and records to reasonably justify the calculation of Gross Receipts to which the excise tax is applicable.

(f) The tax may be lowered or increased to not more than four (4) percent of Gross Receipts by a majority vote of the City Council.

[Taxation Alternative 2 – Flat Fee Option]

(a) Pursuant to Measure [____], approved by the voters of the City on [____], the City Council is authorized to impose a flat operating fee on each City Permittee, with no termination date, on each Commercial Marijuana Activity Business Licensed or Operating Within the City in an amount of not more than twenty dollars (\$20.00) per Square Foot.

(b) For purposes of this Section XX.16, “**Square Foot**” or “**Square Footage**” means the area within each Cannabis Premises used for Commercial Cannabis Activity, measured in square feet, deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Cannabis Activity (such as a janitorial closet).

(c) Every Person engaged in Commercial Cannabis Activity in the City shall pay an annual business operations tax as follows: fifteen dollars (\$15.00) per Square Foot for the first three thousand (3,000) square feet, and seven (\$7.00) per Square Foot for each additional square foot thereafter.

(d) If more than one City Permittee operates on the Cannabis Premises, each City Permittee shall be responsible for paying the pro-rata portion of the tax based on the Square Footage such City Permittee utilizes.

(e) The fees due pursuant to this Section shall be due and payable on a calendar quarterly basis within thirty (30) days following the end of the applicable calendar quarter. Failure to pay excise taxes in a timely manner may result in the suspension of the applicable City Permit until such time as the excise taxes have been paid.

(f) In connection with the payment of the fees pursuant to this Section, each City Permittee shall provide sufficient books and records to reasonably justify the calculation of Gross Receipts to which the excise tax is applicable.

(g) The tax may be lowered or increased to not more than twenty-five dollars (\$20.00) per Square Foot by a majority vote of the City Council.

(a) **Taxation Alternative 3 – Hybrid Flat Fee for Cultivation/ Excise** Pursuant to Measure [____], approved by the voters of the City on [____], the City Council is authorized to impose excise taxes, with no termination date, on each Commercial Marijuana Activity Business Licensed or Operating Within the City in an amount of not more than [two (2) percent] of the gross receipts earned within the City.

(b) For proposes of this Section XX.16, the following terms have the following meanings:

(1) “Square Foot” or “Square Footage” means the amount of Canopy area for Cultivation authorized pursuant to a Cultivation Permit and CUP issued to a Cultivation Permittee. If a Cultivation Permittee can demonstrate to the City Manager or City Manager’s designee that the full Canopy authorized pursuant to the Cultivation Permit and CUP is not being utilized, the unutilized Canopy may be deducted from a Cultivation Permittee’s Cultivation Tax liability.

(2) "Canopy" means all areas where Cultivation occurs, inclusive of all vertical planes. Canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this Chapter. Canopy does not include space used for the storage of fertilizers, pesticides or other products, quarantine, office space, or any ancillary structures not used for Cultivation.

(3) “Cultivation Tax” means the excise tax due pursuant to this chapter for engaging in Cultivation in the City.

(c) Every Cultivation Permittee shall pay an annual Cultivation Tax at either of the following rates:

(1) \$15.00 per square foot of Cultivation area.

(2) One (1) percent on Gross Receipts.

(d) The Cultivation Tax shall not exceed two (2) percent of a Cultivation Permittees Gross Receipts.

(e) The excise tax for Commercial Cannabis Activity other than Cultivation shall initially be set at the following rates:

(1) one (1) percent on Gross Receipts for Manufacturing Permittees.

(2) one (1) percent on Gross Receipts for Retail Permittees.

(f) To the extent a City Permittee holds more than one type of City Permit for Commercial Cannabis Activities which are subject to excise taxes or fees pursuant to this Section, the excise tax applicable to a City Permit type shall only apply to that portion of such City Permittee’s Commercial Cannabis Activity which is authorized by the applicable City Permit type. So, for example, if a City Permittee holds a Manufacturing Permit and a Cultivation Permit, the fees applicable to Cultivation Permittees shall only apply to the

portion of such City Permittee's Commercial Cannabis Activities which are deemed Cultivation at its applicable Cannabis Premises, and the excise tax applicable to Manufacturing Permittees shall only apply to the portion of such City Permittee's Commercial Cannabis Activities which are deemed Manufacturing at its applicable Cannabis Premises.

(g) The excise taxes and fees due pursuant to this Section shall be due and payable on a calendar quarterly basis within thirty (30) days following the end of the applicable calendar quarter. Failure to pay excise taxes or fees in a timely manner may result in the suspension of the applicable City Permit until such time as the excise taxes have been paid.

(h) In connection with the payment of excise taxes and fees pursuant to this Section, each City Permittee shall provide sufficient books and records to reasonably justify the calculation of Gross Receipts to which the excise tax or fees are applicable.

(i) The tax may be lowered or increased to not more than two (2) percent of Gross Receipts by a majority vote of the City Council.

SECTION 3. Recognizing that there is a potential conflict between federal and State law, it is the City Council's intention that this Ordinance shall be deemed to comply with applicable State Law.

SECTION 4. The City Council determines that it is in the best interest of the residents of the City to allow Commercial Cannabis Activities in compliance with applicable State Law, including MAUCRSA, to be established and operated as permitted uses within certain areas of the City subject to the regulations and restrictions provided in this Ordinance. It is the City Council's intention that nothing in this Ordinance shall be construed to:

1. Allow a Person to engage in conduct that endangers others or causes a public nuisance.
2. Allow any activity relating to Cannabis that is otherwise not permitted under State law.

SECTION 5. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations, in that the Ordinance alone does not have the potential for causing a significant effect on the environment. Further permits and approvals will be required before any activity that will affect the environment will be permitted.

SECTION 6. If any section or provision of this Ordinance is for any reason held to be invalid, unconstitutional, illegal, or unenforceable by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, then such section or provision shall be severed and shall be inoperative, and the remainder of this Ordinance shall remain in full force and effect.

SECTION 7. By regulating Commercial Cannabis Activity, the City is only undertaking to preserve the general welfare through implementing the MAUCRSA. The City Council is not assuming, nor is it imposing on its officers and employees, an obligation for which a breach thereof would expose the City to liability in money damages to any Person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any provision of this Ordinance or for the activities of any City Permittee. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Ordinance shall not become a personal liability of any public officer or employee of the City. Nothing in this

Ordinance No. [ORD NO]

Page 27

Ordinance shall be deemed or considered in any respects to constitute authorization to violate any law.