

RESOLUTION NO. 17-135

Resolution Of The City Council Of The City Of Emeryville Adopting Regulations To Govern The Issuance Of Dispensary/Retailer Permits To Cannabis Businesses

WHEREAS, Section 5-28.07(b) of the Emeryville Municipal Code provides that no Dispensary/Retailer Permit, as that term is used in Section 5-28.04(b)(4), shall issue until the City Council adopts regulations establishing issuance of such permit; and

WHEREAS, the City Council desires to establish those regulations at this time by adopting this resolution; and

WHEREAS, the City Council finds that the impacts associated with non-storefront cannabis businesses that hold Dispensary/Retailer permits are more similar to the impacts associated with cannabis businesses engaged in manufacturing, and distribution because the site of operations is not open to the general public, compared to storefront cannabis businesses that hold Dispensary/Retailer permits; and

WHEREAS, the City Council desires to limit the number of storefront cannabis businesses that hold a Dispensary/Retailer permit to mitigate against potential adverse impacts associated with a storefront, and to ensure the cannabis business that receives such a permit will enhance the community; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby adopts the following regulations to govern the issuance of a Dispensary/Retailer permit as that term is used in Section 5-28.04(b)(4). The regulations are as follows:

1. Purpose. The purpose of these regulations is to establish the process by which the City will issue a Dispensary/Retailer permit to a cannabis business with a storefront, which members of the general public may visit to obtain cannabis (Storefront Dispensary) pursuant to a Request for Qualifications (RFQ). Each RFQ is intended to deem one cannabis business qualified to receive a Dispensary/Retailer permit for a Storefront Dispensary.

2. Exemption from RFQ: The Police Chief may issue Dispensary/Retailer permits for businesses that sell directly to consumers through delivery methods and that do not maintain a storefront, which members of the general public may visit to obtain cannabis (Non-Storefront Dispensary). A Dispensary/Retailer permit for a Non-Storefront Dispensary shall be applied for from, and reviewed, approved, issued, modified and/or revoked by the Police Chief in the same manner as all other permits as provided in Chapter 28 of Title 5 of the Emeryville Municipal Code.

3. Issuance of RFQ. The City Manager or her designee may issue a Request for Qualifications (RFQ) inviting potential cannabis businesses to submit their qualifications for a Dispensary/Retailer permit for a Storefront Dispensary upon prior authorization from the City Council.

4. Form of RFQ. The RFQ issued shall include any goals that the City desires to accomplish through the issuance of a Dispensary/Retailer permit to a Storefront Dispensary. The RFQ shall also include the Rating Sheet, attached as Exhibit A hereto, or a rating sheet in a substantially similar form.

5. Rating and Ranking of Applicants.

- a. City staff to be designated by the City Manager shall use the Rating Sheet to rate and rank the cannabis businesses based on their written materials submitted in response to the RFQ and any oral presentations to City staff. The Rating Sheet is intended to provide the minimum criteria that will be utilized to rank the cannabis businesses competing for the qualification. Unless otherwise specified by the City Council prior to the issuance of the RFQ, the multiplication factor for each criterion shall be one.
- b. The City Manager shall forward to the City Council the written submittals from the top three ranked applicants, and any other relevant information, for the City Council's consideration. At the City Manager's discretion, the City Manager may forward submittals from additional applicants for the City Council's consideration. The City Manager shall forward the final scores of all applicants to the City Council.

6. Council Action. In the City Council's sole discretion, the City Council may make the determination of qualification for a Dispensary/Retailer permit for a Storefront Dispensary at either a regular or special meeting, if a determination of qualification is made. The City Council reserves its right to decline to qualify any cannabis business responding to the RFQ or to deem more than one cannabis business responding to the RFQ qualified to obtain a Dispensary/Retailer permit for a Storefront Dispensary.

7. Issuance of Permit. Once the City Council has deemed a cannabis business qualified to obtain a Dispensary/Retailer permit, the Police Chief has the authority to issue the permit for up to one year from the date that the City Council has deemed the cannabis business qualified, provided the following conditions are satisfied:

- a. The cannabis business obtains a conditional use permit for a dispensary/retailer from the Planning Commission for the site of the proposed dispensary/retailer, and all other applicable local permits and licenses; and
- b. The cannabis business provides updated information to the Police Chief to demonstrate that there have been no material changes in their application for a Dispensary/Retailer permit since deemed qualified by

the City Council. In the event that the Police Chief determines that there are material changes in the cannabis business application, the Police Chief shall refer the matter to the City Council for final determination as to whether the Dispensary/Retailer permit shall issue.

8. The City Council may extend the time period that the cannabis business is deemed qualified if the selected cannabis business submits an application prior to the one year anniversary of being deemed qualified requesting such an extension, and the City Council finds there is good cause to extend the time period by which the selected cannabis business must obtain the Dispensary/Retail permit from the Police Chief.

9. Once the City Council has deemed a cannabis business qualified to receive a Dispensary/Retailer permit, and the Police Chief has issued such a permit to the cannabis business, the Police Chief is authorized to approve future permit renewals, modifications or transfers, and to revoke, suspend, or deny permits as provided in Chapter 28 of Title 5 of the Emeryville Municipal Code, as it exists or may be amended.

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

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 5, 2017 by the following vote:

AYES:	<u>5</u>	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

RATING SHEET FOR CANNABIS DISPENSARY/RETAIL OUTLET REQUEST FOR QUALIFICATIONS (RFQ)

Each category ranked on a raw scale of 1 to 10,
with 10 being the highest score available.

Description of Operations	Raw Score (0-10)	Multiplication Factor	Total Points
1. Does the applicant adequately describe the product type, including whether it will be medicinal or recreational?			
2. Does the applicant adequately describe anticipated average production amounts (including each product produced by type, amount, process and rate)?			
3. Does the applicant identify the source(s) of cannabis?			
4. Does the applicant identify any other products or services to be sold or offered at the site that would enhance the experience for the consumer or otherwise benefit the community?			
Description of Premises			
5. Does the applicant identify a site where a dispensary/retail is allowed, and if so, have they secured the right to occupy the property (e.g., own or lease it)?			
Security Plan			
6. Does the plan adequately address how to prevent individuals from remaining on the premises if they are not engaged in activity related to the business?			
7. Does the plan adequately establish limited access to cannabis and cannabis product to both deter and prevent unauthorized access and theft?			
8. Does the plan describe adequate secured storage of cannabis and cannabis products in a manner to prevent diversion, theft or loss?			
9. Is the cannabis or cannabis product provided in a tamper proof or tamper evidence packaging?			
10. Does the plan adequately address how to mitigate off-site impacts such as loitering, noise, odor and driving under the influence?			
11. Does the plan adequately address how to limit the amount of cash on the premises?			
12. Does the plan describe an adequate tracking system?			
Other Licenses			
13. Does the business adequately describe how they intend to obtain state licensing?			

Business Plan	Raw Score (0-10)	Multiplication Factor	Total Points
14. Has the applicant adequately described the intended customer market, and how they intend to reach that market?			
15. Has the applicant analyzed how their proposed business will complement existing Emeryville industries and businesses?			
16. Has the applicant proposed using businesses' hiring and employment practices consistent with Emeryville values?			
17. How does the applicant intend to include or to serve individuals who come from communities that traditionally have been harmed by the War on Drugs?			
18. Has the applicant offered other benefits to the Emeryville community?			
19. Does the applicant's proposed budget submittals, including anticipated first year start up activities, adequately demonstrate financial feasibility for the business if selected as qualified for an Operator's Permit?			
20. Does the applicant's proposal adequately address and further the City goals identified in the RFQ?			
Total Points			

The City reserves the right to disqualify or deduct points from an applicant's overall score if the response to any of the questions below is yes.

Background Check	Yes or No
a. Does any member of the applicant team have a felony conviction as specified in Penal Code section 667.5(c)?	
b. Does any member of the applicant team have a felony conviction as specified in Penal Code section 1192.7?	
c. Does any member of the applicant team have a felony conviction involving fraud, deceit or embezzlement?	
d. Does any member of the applicant team have a felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling any controlled substance to a minor, or offering to sell, furnishing, offering to furnish, administering or giving away any controlled substance to a minor?	
e. Does any member of the applicant team have a felony conviction for drug trafficking with an enhancement pursuant to Health and Safety Code section 11370.4 or 113798?	
f. Has the cannabis business or any member of the applicant team been sanctioned by a licensing authority or other city or county for unauthorized commercial cannabis activity?	
g. Would the granting of an Operator's Permit perpetuate or encourage distribution of cannabis or cannabis products to minors, generation of revenue from the sale of cannabis or cannabis products to fund criminal enterprises, gangs and cartels, diversion of cannabis or cannabis products to jurisdictions outside the state, trafficking of other illegal drugs or facilitating other illegal activity, violence and the use of firearms in the cultivations and distribution of cannabis and cannabis products, the use of public lands in the cultivation of cannabis, or the use of federal property for commercial cannabis activity?	