

ORDINANCE NO. 17-

An Ordinance Of The City Council Of The City Of Emeryville Repealing, Replacing, And Retitling Chapter 28 Of Title 5 Of The Emeryville Municipal Code, "Cannabis"; CEQA Determination: Exempt Pursuant To CEQA Guideline Section 15061(b)(3)

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

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

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

Chapter 28 of Title 5 of the Emeryville Municipal Code, entitled "Marijuana", is hereby repealed in its entirety, retitled "Cannabis", and replaced with the following:

**CHAPTER 28
CANNABIS**

5-28.01 Findings.

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

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

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

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

5-28.02 Purpose and Intent.

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

5-28.03 Definitions.

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

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

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

5-28.04 Permit Requirement; Exemptions from Permit Requirement

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

- (3) Testing Laboratory Permit: A Testing Laboratory Permit is required for all activities for which either the MCRSA or AUMA requires a Type 7 License.
 - (4) Dispensary/Retailer Permit: A Dispensary Retailer Permit is required for all activities for which either the MCRSA or AUMA requires a Type 10 or 10A License.
 - (5) Distributor Permit: A Distributor Permit is required for all activities for which either the MCRSA or AUMA requires a Type 11 License.
 - (6) Transporter Permit: A Transporter Permit is required for all activities for which the MCRSA requires a Type 12 License and/or for transfers of Cannabis or Cannabis Product from the permitted business location of one licensee in the City, for the purposes of conducting Commercial Cannabis Activity.
 - (7) Delivery Permit: A Delivery Permit is required for licensed dispensaries, retailers, microbusinesses or a nonprofit allowed under Business and Professions Code section 26070.5 located outside of the City to deliver to individuals located within the City.
 - (8) Research and Development Permit. A Research and Development Permit is required for all activities related to the research and/or development of Cannabis and Cannabis Products for scientific purposes.
 - (9) Determination of Permit Type. As the State develops additional licenses for cannabis activities, the Police Chief has the discretion to issue any of the above-referenced permits to the extent the additional license or sub-license activities are similar to that of any of the permits.
 - (10) No permit shall issue if the Cannabis Activity is not a permitted land use in the City.
- (c) The following activities are allowed and do not require any permit under this chapter, provided the activity does not constitute Commercial Cannabis Activity and complies with other state and local laws:
- (1) Possessing, processing, transporting, purchasing, obtaining or giving away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of Cannabis not in the form of concentrated Cannabis.
 - (2) Possessing, processing, transporting, purchasing, obtaining or giving away to persons 21 years of age or older without any compensation whatsoever,

not more than eight grams of Cannabis in the form of concentrated Cannabis, including as contained in Cannabis Products.

- (3) Possessing, planting, cultivating, harvesting, drying or processing of not more than six living Cannabis plants, provided such activity complies with Chapter 21 of Title 9 of the Emeryville Municipal Code, and is not used in any Commercial Cannabis Activity, which would require a Permit.
 - (4) The smoking of Cannabis and Cannabis Products, provided smoking is not prohibited under state law or Chapter 29 of Title 5 of the Emeryville Municipal Code.
 - (5) The ingestion of Cannabis or Cannabis Products.
 - (6) Primary caregiver, who is not subject to licensing requirements of the MCRSA, engaged in the delivery of Cannabis or Cannabis Product to a Qualified Patient.
- (d) Excepted as provided herein, all other Cannabis activities are prohibited.

5-28.05 Permit Applications

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

- (a) Identifying Information for Ownership and Management. The name and address for each Commercial Cannabis Activity Business Owner and an explanation of the legal form of business ownership, for example, sole proprietor, partnership, California corporation, etc.
- (b) Additional Identifying Information, Owners and Key Employees: Each Cannabis Business Owner, as well as each employee who makes or will make operational or management decisions that directly impact the business, shall submit electronic fingerprint images and related information required by the Police Chief for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests to be considered as set forth in this Chapter.
- (c) Description of Premises. The address and Assessor's Parcel Number(s) of the location for the proposed Commercial Cannabis Activity; and the name and contact information for the property owner(s) where the proposed Commercial Cannabis Activity will be located.

- (d) State License Type and Compliance. A description of the specific state Cannabis License(s) that the Cannabis Business either has obtained, or plans to obtain. The Cannabis Business shall describe how it will meet the state licensing requirements, and provide supporting documentation as required by the Police Chief.
- (e) Other Local Licenses. A description of the specific Cannabis license or permits that the applicant either has obtained, or plans to obtain from other local jurisdictions.
- (f) Description of Operations. A description of the nature of the proposed Commercial Cannabis Activity, product type, average production amounts (including each product produced by type, amount, process and rate) and source(s) of Cannabis.
- (g) Security Plan. A description and documentation of how the applicant will secure the premises 24 hours per day, 7 days per week, and how waste derived from any Cannabis Commercial Activity will be disposed of in a manner to ensure it may not be utilized for unlawful purposes. The security plan shall include, but is not limited to, the following:
 - (1) Preventing individuals from remaining on the premises if they are not engaged in activity expressly related to the operations of the Cannabis Activity;
 - (2) Establishing limited access areas accessible only to authorized personnel including security measures to both deter and prevent unauthorized entrance into areas containing Cannabis or Cannabis products and theft of Cannabis or Cannabis Products;
 - (3) Storing all finished Cannabis and Cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, immediate sale, if applicable;
 - (4) Providing tamper proof and tamper evident packaging for finished Cannabis product;
 - (5) Preventing off site impacts to adjoining or near properties; and
 - (6) Limiting the amount of cash on the premises.
- (h) Tracking System. A description of how the Cannabis Business will track inventory of Cannabis product from seed to sale.
- (i) For Cannabis Businesses applying for a Delivery Permit:

- (1) Listing of all vehicles and devices to be used for delivery of Cannabis or Cannabis Product within the City, which includes the vehicle's make, model, year, license plate number and vehicle identification number.
 - (2) Identifying all persons who will deliver Cannabis or Cannabis Product in the City. Such individuals must be at least 21 years of age at the time of submittal of the application.
 - (3) Copies of applicable authorizing state and local licenses and permits issued to Cannabis Business allowing it to engage in Commercial Cannabis Activity.
- (j) Certificate of insurance demonstrating ability to comply with the insurance requirements as required for the applicable permit in a form acceptable to the City Attorney.
 - (k) Signature of Applicant and Property Owner. The application shall be signed by each Cannabis Business Owner under the penalty of perjury, certifying that the information submitted, including all supporting documents, is to the best of the applicant's knowledge and belief, true, accurate and complete, and by the property owner for purposes of certifying that s/he has reviewed the application, and approves the use of the property for the purposes stated in the application. The signature of both the Cannabis Business Owner and the property owner shall constitute evidence of their express consent to allow any City official or employee to enter upon and inspect the premises upon reasonable notice.
 - (l) The information required by this Section shall be confidential, and shall not be subject to public inspection or disclosure except as may be required by federal, state or local law. Disclosure of information pursuant to this Section shall not be deemed a waiver of confidentiality by the applicant or any individual named in the application. The City shall incur no liability for the inadvertent or negligent disclosure of such information.

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

- (a) Review of Application. The Police Chief shall consider the application, and the results from any investigation into the application as deemed necessary by the Police Chief.
- (b) Disapproval of Application. If the Police Chief disapproves an application, he or she shall notify the applicant in writing, stating the reasons for the disapproval. Notification of disapproval shall be delivered by first class mail to the applicant. No permit shall issue unless a successful appeal of the disapproval is made within the requisite time frame.

- (c) Appeal of Disapproval:
- (1) Within 15 days after the Police Chief serves notification of disapproval, an applicant may appeal the disapproval by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
 - (2) The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within 30 days after the receipt of the applicant's appeal, unless the City and the applicant agree to a longer time, to consider the appeal. The City Clerk shall provide notice of the date, time and place of hearing, at least 7 days prior to the date of the hearing.
 - (3) The City Manager shall appoint a Hearing Officer to hear the appeal and determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant and the Police Chief shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
 - (4) The Hearing Officer shall issue a written decision within 15 days after the close of the hearing. The decision of the Hearing Officer shall be final.
- (d) Grounds for Denial, Revocation or Suspension of Permit. The granting of a Permit or a renewal thereof may be denied and an existing Permit revoked or suspended if:
- (1) The Cannabis Business Owner has knowingly made a false statement in the application or in any reports or other documents furnished to the City.
 - (2) The Cannabis Business Owner has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the Cannabis Business for which the application is made, which includes but is not limited to:
 - a. A violent felony conviction, as specified in Penal Code section 667.5(c)
 - b. A serious felony conviction, as specified in Penal Code section 1192.7
 - c. A felony conviction involving fraud, deceit or embezzlement

- d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - e. A felony conviction for drug trafficking with an enhancement pursuant to Health and Safety Code section 11370.4 or 113798.
- (3) The Cannabis Business or a Cannabis Business Owner has been sanctioned by a licensing authority or other city or county for unauthorized Commercial Cannabis Activity.
- (4) The granting or renewing of the Permit would perpetuate or encourage any of the following:
- a. Distribution of Cannabis or Cannabis Products to minors;
 - b. Generation of revenue from the sale of Cannabis or Cannabis Products to fund criminal enterprises, gangs and cartels;
 - c. Diversion of Cannabis or Cannabis Products to jurisdictions outside of the State where Cannabis and Cannabis Products are unlawful under state or local law;
 - d. Trafficking of other illegal drugs or facilitation of other illegal activity;
 - e. Violence and the use of firearms in the cultivation and distribution of Cannabis and Cannabis products;
 - f. The use of public lands in the cultivation of Cannabis; or
 - g. The use of federal property for Commercial Cannabis Activity.
- (5) For any other reason that would allow the state to deny a license under either the MCRSA or AUMA.
- (6) Fails to pay required City fees and taxes.
- (7) Violates any provision of the MCRSA, AUMA, this Chapter or any other permits issued by the City for the Cannabis Activity, such as a conditional use permit.
- (8) Except as provided in sub-sections d and e of Section 5-28.06(d)(2), an application for a permit shall not be denied if the sole ground for denial is

based upon a prior conviction of either Section 11350 or Section 11357 of the California Health and Safety Code. An application for a permit also shall not be denied if the State would be prohibited from denying a license pursuant to either Section 26057(b)(5) or Section 26059 of the California Business and Professions Code. Conviction of any controlled substance felony subsequent to permit issuance shall be grounds for revocation of a permit or denial of the renewal of a permit.

(e) **Suspension and Revocation.**

- (1) If the Police Chief deems continuation of the operation of delivery by the cannabis dispensary will cause a significant threat to the health, safety or welfare of the public, the Police Chief may suspend the Permit and all rights and privileges thereunder until a Hearing Officer renders a written decision on the revocation of the Permit.
- (2) The Police Chief shall give notice to the Cannabis Business of his or her intent to revoke a Permit in the same manner as notice of disapproval and provide the City Clerk with a copy of the notice.
- (3) The hearing for the revocation of the Permit shall be set and conducted in the same manner as an appeal of disapproval. The decision of the Hearing Officer shall be final.

5-28.07 Permit Issuance

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

5-28.08 Permit Term

- (a) The Permit shall be valid for one year from the date of issuance.

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

5-28.09 Transfer of Permit or Modifications to Permit

- (a) A Permit is non-transferable to another location, and no transfer to another Cannabis Business Owner or modifications to a permitted facility may be made except in accordance this section.
- (b) A request for change in Permit ownership shall be submitted the Police Chief on a City form at least sixty (60) days prior to the anticipated transfer, together with any applicable fee(s). Requests submitted in less than sixty (60) days before the transfer will be process only in the City's discretion and may be subject to an expedited processing fee. A new Owner(s) shall meet all requirements for applicants of an initial Permit. The request shall include the following information:
 - (1) Identifying information for the new Cannabis Business Owner(s) and management as required in an initial Permit application;
 - (2) A written certification by the new Cannabis Business Owner in accordance as required in an initial Permit application;
 - (3) The specific date on which the transfer is to occur; and
 - (4) Acknowledgement of full responsibility for complying with the existing Permit.
- (c) Change in security plan. A request to modify the security plan shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- (d) Change of Contact Information. A request for change in Cannabis Business contact information shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- (e) Change in Trade Name. A request for change in Cannabis Business trade or business name shall be submitted to the Police Chief on a City form at least thirty (30) days prior to the anticipated change, together with the applicable fee.

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

5.28-10 General Conditions for All Permits

- (a) State License. Beginning at such time that the State has begun to issue licenses and at all times thereafter, Cannabis Business shall hold a valid State license for the equivalent State license type.
- (b) Hours of Operation. All permitted facilities shall be closed to the general public and Transporter deliveries and pick-ups shall be prohibited between the hours of 7:00 p.m. and 8:00 a.m. With the exception of activities authorized pursuant to a Dispensary/Retailer Permit, no direct sales of Cannabis or Cannabis Product to the general public may occur upon the premises.
- (c) Odor Control. Odors shall be contained on the property on which the Commercial Cannabis Activity is located. If the City receives any odor complaints, the Cannabis Business shall work with the Building Official to correct odor concerns. Unresolved or repeated odor complaints may be basis for suspension or revocation of the Permit or denial of Permit renewal.
- (d) Business Conducted Within Building. No production, distribution, storage, display or wholesale of cannabis and cannabis-infused products shall be visible from the exterior of the building where the Commercial Cannabis Activity is being conducted.
- (e) Security Measures. All Cannabis Businesses shall maintain a commercial burglar alarm monitoring system, and install a video surveillance system.
- (f) Security Breach. A Cannabis Business shall notify the Police Department within 24 hours after discovering any of the following:
 - (1) Diversion, theft, loss, or any criminal activity involving the Cannabis or Cannabis Product or any agent or employee of the permittee.
 - (2) The loss or unauthorized alteration of records related to Cannabis or Cannabis Product, registered Qualifying Patients, Primary Caregivers or employees or agents.

- (3) Significant discrepancies identified during inventory.
- (4) Any other material breach of security.
- (g) **Labeling and Packages.** Labels and packages of Cannabis and Cannabis products shall meet all state and federal labeling and packaging requirements. Until such regulations are adopted by the federal and/or state authorities, as a condition of Permit issuance, the Police Chief may impose labeling and packaging requirements to protect the public safety, health and welfare.
- (h) **Inspection records.** Inspections, if necessary, shall take place at a reasonable time with prior notice to the Cannabis Business. Upon request, the Cannabis Business shall timely provide the City official with records related to the business, including, but not limited to, utility bills from the commercial energy provider for the premises. This section shall not limit any inspection authorized under any other provision of law or regulation.
- (i) Obtain and maintain a business license from the City.
- (j) Maintain at all times Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for suspension of the permit immediately, and ultimately, revocation.
- (k) By accepting the permit, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law, the City, its officers, agents and employees from and against any all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability caused by the active negligence, sole negligence of willful misconduct of City, its officers, agents and employees.
- (l) Maintain for a minimum of three (3) years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements (including any in-kind contributions) as well as records of all operational expenditures and costs incurred

by the permittee in accordance with generally accepted accounting practices and standards typically applicable to business records, which shall be made available to the City during business hours for inspection upon reasonable notice by the Police Chief.

- (m) Notify the Police Chief within three days of any notices of violations or other corrective action ordered by a state or other local licensing authority, and provide copies of the relevant documents.

5.28-10 Conditions for Specific Permits

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

5.28-11 Fees.

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

5.28-11 Regulations and Enforcement

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

5.28-12 Penalties

- (a) Violations of this Chapter are punishable as misdemeanors. Each day of engaging in any of the prohibited activities shall constitute a separate offense.
- (b) Any violation of this Chapter or regulation promulgated under this Chapter is hereby declared to be a public nuisance.

SECTION TWO. CEQA DETERMINATION

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

SECTION THREE. SEVERABILITY

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

SECTION FOUR. EFFECTIVE DATE

This Ordinance shall take effect on September 1, 2017. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION FIVE. CODIFICATION

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

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, March 21, 2017, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, April 4, 2017 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

MAYOR

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY