



**Date:** TBD

**To:** Interested Parties

**From:** Karen Pinkos, City Manager

**Subject:** Approval of an Operating Permit for Authentic El Cerrito, LLC for a Cannabis Storefront Business operation located at 10764-10770 San Pablo Avenue

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On, December 19, 2017, the El Cerrito City Council adopted Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code, establishing standards and a permit process for cannabis businesses permitting up to two Cannabis Business storefronts subject to certain criteria and location limitations as prescribed in the Ordinance.

Pursuant to Chapter 6.80, the City Council adopted Resolution No. 2017-07, creating an application process which also included administrative regulations for the Regulatory Permit ("Administrative Regulations"). Pursuant to the Administrative Regulations, an Operating Permit must be issued by the City.

On September 19, 2018, the City of El Cerrito issued a single Operating Permit. On August 13, 2020 the City opened up the application period for a second Operating Permit pursuant to Chapter 6.80.

The City of El Cerrito received three applications for Operating Permits for cannabis storefront businesses. A review team consisting of the City Manager, Police Chief, City Attorney, Community Development Director and Planning Manager convened to evaluate the applications.

The City review team evaluated the submitted applications based upon (1) the process and criteria established by Chapter 6.80 of the El Cerrito Municipal Code, (2) the complete packets of information submitted by each of the applicants, and (3) each team member's demonstrated specific knowledge and expertise in their respective fields and the commercial cannabis business as determined by the application and subsequent interview, (4) and the site plan for the proposed project. The review team invited all three teams to an interview. Based upon the written materials and interview, the review team ranked the applications and found that the application submitted by Authentic El Cerrito, LLC for the a Cannabis Storefront at 10764-10770 San Pablo Avenue was superior in terms of clarity; specificity; site selection, design and layout; and a comprehensive set of community benefits.

Pursuant to Chapter 6.80 of the El Cerrito Municipal Code, and the San Pablo Avenue Specific Plan, the City provided notice by first class mail to all property owners of record, residents and businesses

within a three-hundred-foot radius of the proposed cannabis business and any person or group that had specifically requested, in writing, notice regarding applications for cannabis businesses.

In deciding whether to issue this Operating Permit, the City Manager considered all application materials submitted. The record supports a conclusion that the applicant has the capacity, capitalization, and history to operate the proposed Cannabis Storefront Business in compliance with the Municipal Code and California law and without diminishing the health, safety, and general welfare of the public. During the application process, and through subsequent due diligence, the proposed operator displayed a thorough understanding of the applicable California laws and regulations and the requirements of Chapter 6.80 of the Municipal Code, as well as a desire to support and improve the El Cerrito Community.

The operation of the proposed Cannabis Storefront Business will provide significant public benefits in the form of a contribution of a tiered percentage of the business' gross receipts to support important City services and activities of sponsored groups, non-profits or other organizations that support improvement of the quality of life in El Cerrito as well as through their own internal workforce policies and programs.

Based on the information noted above and all information contained in the application record, I hereby approve this Operating Permit for a Cannabis Storefront Business located at 10764-10770 San Pablo Avenue, subject to the Conditions of Approval in Attachment A and all requirements and standards contained in Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code and applicable California law.

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Karen Pinkos, City Manager

Attachments:

A. Conditions of Approval

Attachment A  
Conditions of Approval for  
Commercial Cannabis Business Operating Permit  
Issued to Authentic El Cerrito, LLC  
Located at 10764-10770 San Pablo Avenue:

1. This Operating Permit is only valid for a cannabis storefront business located at 10764-10770 San Pablo Avenue ("Property") as shown on the attached site plan (Exhibit 1). This Permit is valid only at the specified location and is granted only to the business owners as specified in the Cannabis Business Operating Permit- Retail Application ("Application") submitted by Authentic El Cerrito, LLC. This Operating Permit is issued to Authentic El Cerrito, LLC ("Operator"). Any changes to the business ownership of the Operator are subject to the requirements of Section 6.80.090 of the El Cerrito Municipal Code.
2. The operation of cannabis retail businesses is a highly regulated business activity which is subject to various state and local laws and regulations. Operator shall comply with applicable local and state laws governing its operations. Operator shall be responsible for obtaining all applicable City and State permits, approvals, and consents, even if the applicable state laws and regulations are altered following the Effective Date. In addition, Operator shall be responsible for continuously maintaining this Operating Permit and any permits or licenses required by the State. Operator acknowledges and understands that it has an obligation to renew its Operating Permit prior to expiration pursuant to the terms of Chapter 6.80.090 and to renew and State-issues permits or licenses. Operator understands and acknowledges that City may (a) deny or conditionally approve a renewal of this Operating Permit; (b) revoke this Operating Permit for the reasons stated in the Operating Permit and Chapter 6.80; (c) amend Chapter 6.80 or implement regulations in a manner that would impose stricter requirements on an existing or renewed Operating Permit; or (d) apply an amended Chapter 6.80 or implementing regulations to an Operating Permit renewal application.
3. Operator acknowledges that the operation of a cannabis business is currently illegal under the Federal Controlled Substance Act. In the event that the United States federal government threatens City with a federal claim or sanctions for permitting a cannabis business or if the federal government threatens or takes action to withhold federal funding from City in any manner or amount for permitting said business, City may modify or terminate this Operating Permit at City's discretion in order to protect City from such claim or to protect the federal funding City receives without any liability to City. Operator acknowledges and specifically waives any rights, under any theory of law, to claim or recover damages from City, its Officials, Officers, employees or agents, including but not limited to damages for tenant improvements, investment capital, lost profits, lost revenue, loss due to interference with business perspective, emotional distress, breach of contract, loss of cannabis inventory, or other asserted damage related to the establishment of a commercial Cannabis business in El Cerrito.
4. If federal or state laws, regulations or policies enacted after the Operating Permit has been issued modify, prevent, or preclude compliance with one or more material provisions of the Operating Permit and elimination or modification of the provision(s) will not alter key provisions of the Operating Permit or City regulations, such provisions of the Operating Permit shall be modified or suspended as may be necessary to comply with such state or federal laws, regulations, or policies. If appropriate, any changes shall be confirmed in writing for clarification purposes. If the state or federal laws, regulations, or policies enacted or enforced render a substantial portion of the terms of this Operating Permit ineffective, illegal or otherwise contrary to said state or federal law, and modification or suspension conflicts with key provisions of the Operating Permit or City regulations, City revoke this Permit without any liability to Operator, and Operator acknowledges and specifically waives any right to recover any damages from City, its Officials, Officers, employees or agents, including but not limited to damages for tenant improvements, investment capital, lost profits, lost revenue, community benefit fees, loss due

to interference with business perspective, emotional distress, breach of contract, loss of cannabis inventory, or other asserted damage related to the establishment of a cannabis business in El Cerrito.

5. This Operating Permit allows only a Cannabis Storefront Business and cannabis retail activities in conformance with Chapter 6.80 of the El Cerrito Municipal Code, these Conditions of Approval, applicable California law, and all approvals issued by the State of California for the business. The Operator shall obtain all required approvals from the State of California for the operation of the Cannabis Storefront Business prior to the initiation of operations of the business and shall provide copies of all required State of California approvals to the City Manager and Chief of Police.
6. The Cannabis Storefront Business and related retail activities shall be operated substantially in conformance with the Application. Changes to these Conditions of Approval may be approved by the City Manager if necessary to maintain the health, safety, and general welfare of the public.
7. Sales and storage of cannabis and storage of cash shall be limited to the approved location of the Cannabis Storefront Business and shall be prohibited within the administrative office. Access to the administrative office shall generally be restricted to employees of the Operator.
8. This Operating Permit shall also allow delivery of cannabis by the Cannabis Storefront Business and in compliance with Section 6.80.070.K of the El Cerrito Municipal Code. Operator shall notify the City Manager and the Chief of Police a minimum of 30 days prior to offering delivery services. Operator shall obtain all necessary approvals from the State of California prior to initiating cannabis delivery service within El Cerrito and shall provide copies of State of California approvals to the City Manager and Chief of Police with the required notice of delivery services. Once initiated, delivery services shall conform to the requirements of Chapter 6.80 of the Municipal Code, applicable California law, these Conditions of Approval, and all approvals from the State of California.
9. Prior to issuance of a building permit or operation of the approved Cannabis Storefront Business, Operator shall submit an application to the City of El Cerrito for Design Review, based on the plans and elevations depicted in the Application. The Design Review application shall be reviewed pursuant to the design review procedures in the San Pablo Avenue Specific Plan.
10. The approved Cannabis Storefront Business shall be operated in compliance with the Security Plan submitted in the Application. All mechanical and electronic components of the security system, including, but not limited to, cameras, motion sensors, alarms, panic buttons, metal detectors, and locks, shall be maintained in working order.
11. Operator shall meet annually (or more frequently as determined to be necessary by the Chief of Police) with the El Cerrito Chief of Police, or designee, to review and approve the Security Plan. The Chief of Police may require changes to the Security Plan sufficient to ensure public safety.
12. Operator shall provide the following Community Benefits:
  - a. In lieu of a prospective cannabis business tax which a future City Council or Citizen Initiative could schedule for public vote during the term of this Operating Permit, the Operator shall pay a Community Benefit fee. Operator's Community Benefit fee shall

be based on the gross receipts of the approved Cannabis Storefront Business as follows:

1. Five percent (5%) of annual gross receipt sales between \$1.00-\$4,999,999, four percent (4%) of annual gross receipt sales between \$5,000,000-\$9,999,999, and three percent (3%) of annual gross receipt sales greater than \$10,000,000. ("Community Benefits Fee"). Operator shall pay the Community Benefits Fee as long as Operator, or a legal successor permitted under Chapter 6.80, operates the approved Cannabis Storefront Business on the Property, or at another location under terms consistent with Chapter 6.80. If this Operating Permit is revoked or suspended for any reason, Operator shall pay the Community Benefits Fee at the rates set forth in this Operating Permit using all sales through to the close of business. Operator's obligation to pay the Community Benefit Fee shall cease if the City of El Cerrito implements a tax, specifically applied to cannabis businesses, equal to or greater than the percentage of gross receipts paid by Operator as the Community Benefit Fee. If the rate of such a tax on cannabis businesses is less than the percentage of gross receipts paid by Operator as the Community Benefit Fee, Operator shall continue to pay the difference between the tax rate and the rate paid as the Community Benefit Fee. Thirty-thousand dollars (\$30,000) of the annual Community Benefit Fee shall be used expressly for administration of the Operating Permit. City may accept cash for payment of any and all taxes, fees, and assessments. However, should the City incur any cost from a financial institutions or armor car carrier service for the handling of cash payments the City may require payment by check, cashier's check, ACH or other approved method of payment otherwise the Operator maybe subject to fees for handling of cash payments.
  - a. Within 30 days of Effective Date of this Operating Permit, Operator shall pay \$100,000 to the City which will be credited to the first month of the Community Benefit Fee when due or any future months until the credit is exhausted.
  - b. Operator shall, no later than the last day of the month following the close of the calendar month, file with the Finance Department a statement of the Community Benefit Fee owed for that calendar month and the basis for calculating the Community Benefit Fee. The Finance Director may require that the statement be submitted on a form prescribed by the Finance Director. The fee for each month shall be due and payable on that same date as the statement for the calendar month is due. However, the Finance Director may, at his or her discretion, establish alternative reporting and payment periods as the Finance Director deems necessary to ensure collection of the Community Benefit Fee.
  - c. For the purposes of this Operating Permit, "gross receipts," , means, whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise, or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:
    - i. Cash discounts were allowed and taken on sales;
    - ii. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

- iii. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
  - iv. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
  - v. Cash value of sales, trades or transactions between departments or units of the same business located in the City of El Cerrito or if authorized by the Finance Director in writing;
  - vi. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;
  - vii. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
  - viii. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
  - ix. Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis or industrial hemp) or other personal tangible property which the Finance Director has excluded in writing by issuing an administrative ruling shall not be subject to the cannabis business tax under this section. However, any business activities not subject to this section as a result of an administrative ruling shall be subject to the appropriate business tax provisions of Chapter 4.32 or any other Title or Chapter of this code as determined by the Finance Director.
- d. Penalties and interest. If Operator fails or refuses to pay the Community Benefit Fee as stated in this Operating Permit, the following shall apply:
- i. A penalty equal to ten percent (10%) of the amount of the unpaid Community Benefit Fee, in addition to the unpaid amount of the Community Benefit Fee, plus interest on the unpaid amount of the Community Benefit Fee calculated from the due date at the rate of one percent (1.0%) per month.
  - ii. If the Community Benefit Fee remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the unpaid amount of the Community Benefit Fee, plus interest at the rate of one percent (1.0%) per month on the unpaid amount and on the unpaid penalties.

- iii. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the unpaid Community Benefit Fee and penalty until the balance is paid in full.
  - iv. If the Community Benefit Fee payment remains unpaid after 30 days' notice from the City, the City may revoke or suspend this permit.
  - v. Whenever a check or electronic payment is submitted in payment of a Community Benefit Fee and the payment is subsequently returned unpaid by the bank for any reasons, Operator shall be liable for the unpaid amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.
2. In addition to the Community Benefits Fee, Operator shall provide the following benefits to the community:

a. Community Benefit #1: Workforce Development

The Operator shall provide a Workforce Development Program as described in Operator's application for this permit. This program shall be conducted for those employees working for Authentic-El Cerrito. These classes shall include but not limited to the following: Introduction to Business, Microsoft Excel, Creating PowerPoint Presentations, Public Speaking, Basic Accounting, Supply Chain Logistics, Leadership and Communications.

b. Community Benefit # 2: Collective Bargain Agreement

As part of a commitment to providing high quality jobs the Operator shall submit proof of a current collective bargaining agreement with a labor organization that represents cannabis workers in California that provides living wages, benefits, and worker's compensation for employees.

c. Community Benefit #3: Community Contributions

As part of its community benefits program the Operator shall donate at a minimum \$50,000 per year to the Municipal Services Corporation to be distributed to local non-profits or efforts directly towards combatting displacement and homelessness, drug addiction and other needs based on community priorities, as determined by the Board of the Municipal Services Corporation with input from the City Council. In the event that the Municipal Services Corporation ceases to operate during the term of this Operating Permit, the payment described in this paragraph shall be made to a different organization identified by the City Manager or directly to the City. In addition, to this the Operator will sponsor special editions sales whereby the proceeds of certain special edition products shall be donated to local causes such as homelessness, COVID-19 response fund and other causes approved by the City Manager or his/her designee prior to the beginning of the sale disbursing such funds.

d. Community Benefit #4: Local Hiring

As part of Operator's labor and employment practices, Operator will actively seek out and recruit local hires to staff the cannabis Storefront Business which will include, supervisory, managerial, and administrative positions. The Operator shall adhere to the El Cerrito Minimum Wage requirement pursuant to El Cerrito Municipal Code Chapter 6.95, in a collective bargaining agreement between the Operator and represented employees, or as proposed by the Operator in the Community Benefits section of their Application whichever is the greater.

e. Community Benefit #5: Career Development/Apprenticeship Program

Operator will offer a Career Development Program, as described in Operator's Application, to create opportunities for those often overlooked in the community. This program will identify individuals such as those with a non-violent cannabis conviction, veterans, those from the foster care system, or others who have simply experienced extreme financial hardship.

f. Community Benefit #6: Drug Abuse Education

The Operator will host regular educational seminars on cannabis products and related safety concerns. Seminars will be performed by a designated Authentic-El Cerrito staff member, or cannabis expert with an interactive presentation, followed by a Question & Answer session, as described in Operator's Application. Presentations will be designed to cover proper and safe dosing, the dangers of driving under the influence, and how different consumption methods interact with the body differently.

g. Community Benefit #7: Volunteer Hours

The Operator will actively integrate into the community through a volunteer program, providing a minimum of 150 hours of employee volunteering each year. This will be conducted by the Operator's community partnerships and employees freely selecting any charity or non-profit in the City of El Cerrito where they would like to volunteer thus permitting them to stay socially engaged with what happens in their own neighborhood and assists them in developing the skills and experience to become leaders in the community.

13. Hours of operation of the business shall be limited to between 8:00 a.m. and 9:00 p.m.

14. The business shall comply with all performance standards contained in Section 6.80.070 of the El Cerrito Municipal Code and applicable California law.

15. Insurance

- a. Operator shall 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 per occurrence and comprehensive automobile liability (owns, non-owned, hired) 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. 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 officers, and employees as additional insured. Additionally, insurance coverages and workers' compensation liability coverage as required by the State of California shall be maintained. In the event that the insurance requirements in chapter 6.80 are amended, Operator shall modify its insurance policies to comply with the new requirements and provide evidence of updated insurance to City.
  - b. If Operator purchases and maintains commercial property liability insurance with a Business Interruption insurance endorsement, Operator shall remit Community Benefit Fees in an amount Operator collects under the policy for any loss under the Business Interruption clause of the insurance policy.
16. All current employees of Operator shall submit to a background check prior to the commencing sales to the public pursuant to this Operating Permit. Future employees of the business shall submit to a background check prior to the employee's start of employment at the business. All background checks shall be shared with the El Cerrito Police Department and shall be conducted to the satisfaction of the El Cerrito Chief of Police or designee. Operator shall not employ persons who have 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, to the satisfaction of the El Cerrito Chief of Police or designee. Prior marijuana or cannabis convictions shall not be an automatic bar to employment.
  17. Operator shall prevent the emission of particulate matter, air contaminants and odors which are detectable without instruments by a reasonable person outside the building where the business is located.
  18. Operator shall ensure that all customers waiting to enter the business are accommodated inside the building. Customers shall not be directed to queue or wait outside the building unless to comply with Public Health Orders.
  19. Operator shall continue to provide medical cannabis sales and services as long as the State of California continues to issue distinct licenses for medical cannabis sales.
  20. The Operating Permit shall expire three years from the date which the Operator is granted a Certificate of Occupancy or otherwise begins operation. The permit shall be subject to the procedures for renewal, nonrenewal, suspension, revocation, transfer, modification, and appeal set forth in Section 6.80.090 of the El Cerrito Municipal Code.
  21. As required in Chapter 6.80.060(K), any application to renew the Operating Permit shall be submitted no later than forty-five (45) days prior to the expiration date.

22. Operator shall submit a complete application for design review within 8 weeks of issuance of this Operating Permit and a complete application for building permits within 8 weeks of design review approval. Operator shall receive a Certificate of Occupancy within six (6) months of approval of this Operating Permit, the City Manager may revoke, suspend, or amend this Operating Permit.

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