

ORDINANCE NO. 2017-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REPEALING AND REPLACING CHAPTER 6.80 "COMMERCIAL CANNABIS" TO THE EL CERRITO MUNICIPAL CODE

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, California voters enacted the Compassionate Use Act ("CUA") in 1996, legalizing medical cannabis; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act ("MMPA") allowing for collective, cooperative cultivation projects, commonly known as "dispensaries"; and

WHEREAS, in 2006, the City of El Cerrito banned medical marijuana dispensaries (Ordinance No. 2006-06); and

WHEREAS, in 2015, the Legislature enacted the Medical Cannabis Regulation and Safety Act ("MCRSA"), creating a comprehensive licensing and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis; and

WHEREAS, in 2016, the City of El Cerrito banned cultivation and delivery of marijuana (Ordinance No. 2016-01); and

WHEREAS, in November 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), legalizing recreational cannabis use for adults 21 years of age and older with certain restrictions; and

WHEREAS, the AUMA creates a comprehensive regulatory and licensing structure for commercial nonmedical cannabis businesses, including cultivation, manufacturing and retail; and

WHEREAS, the Legislature adopted SB 94 in June 2017 to consolidate the medical and recreational regulatory schemes to create one single comprehensive regulatory system to regulate all commercial cannabis uses; and

WHEREAS, the new comprehensive regulatory system created by SB 94, intended to regulate all commercial cannabis uses, is called the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and

WHEREAS, state licenses for all cannabis businesses are expected to be ready for issuance in January 2018; and

WHEREAS, the CUA, MMPA, and MAUCRSA do not prevent a city from using its constitutional authority to enact nuisance, health, and safety, and land use regulations regarding commercial cannabis uses and a city retains the authority to prohibit, limit or regulate commercial cannabis uses within its jurisdiction; and

WHEREAS, the City Council desires to regulate all commercial cannabis uses operating in the City in a manner that mitigates potential negative impacts, prevents cannabis from reaching minors or the illicit market, preserves public health and safety, protects the environment, drives diverse economic opportunities, and implements the City's General Plan and the San Pablo Avenue Specific Plan; and

WHEREAS, the City is constitutionally authorized to make and enforce within its limits all ordinances for the protection and promotion of the public health, safety, and general welfare; and

WHEREAS, an applicant for a state commercial cannabis license must first obtain local approval prior to receiving state approval and cannot submit an application for a state license if the proposed cannabis business violates a local ordinance; and

WHEREAS, no commercial cannabis business shall be permitted within the City unless it complies with the licensure and regulatory requirements contained in the El Cerrito Municipal Code Chapter 6.80.

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Amendment of Municipal Code. Chapter 6.80 of the El Cerrito Municipal Code is stricken in its entirety and replaced with the following:

6.80 – COMMERCIAL CANNABIS

6.80.010 Purpose and Intent.

The purpose of this chapter is to impose regulatory requirements on various commercial cannabis uses authorized and licensed by the State of California pursuant to state law. This chapter imposes licensing and regulatory requirements on cannabis businesses in addition to any other business license and regulatory requirements imposed on cannabis businesses by applicable state law. If a commercial cannabis use is not specifically permitted in this chapter, it is not allowed to operate within the City.

6.80.020 Definitions

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or be discovered, or developed, that has psychoactive or medical properties, whether growing or not, including but not limited to the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by California Health and Safety Code section 11018 and Business and Professions Code section 26001(f), as both may be amended from time to time. Any reference to cannabis or cannabis products shall include medical and nonmedical cannabis and medical and nonmedical cannabis products, unless otherwise specified. Cannabis or cannabis product does not mean industrial hemp as defined by Health and Safety Code section 11018.5, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. Cannabis does not include the mature stalks of the plant; fiber produced from the stalks; any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom); fiber, or the sterilized seed of the plant which is incapable of germination.
- B. "Cannabis business" means a person, partnership, corporation, company, association, collective, or cooperative which engages in commercial cannabis use(s).
- C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into concentrate, including, but not limited to concentrated cannabis, or an edible or topical product containing cannabis and other ingredients.
- D. "Cannabis retail" or "cannabis retail business" means a cannabis business that distributes, dispenses, stores, exchanges, ~~processes~~, packages, re-packages, labels, sells, makes available, transmits, or gives away cannabis or cannabis products for either medical or recreational use and is operated in accordance with state and local laws and regulations. Cannabis retail includes, but is not limited to, selling and/or delivering cannabis or cannabis products as part of a sale, pursuant to a Type 10 cannabis license, or a cannabis license subsequently established.
- E. "Cannabis storefront business" means a cannabis business with a physical, permanent location in the City of El Cerrito. A cannabis retail business with a physical, permanent location in El Cerrito may be referred to as a "cannabis storefront retail business."

- F. "Chief of Police" means the Chief of the El Cerrito Police Department or his or her designee.
- G. "City Manager" means the city manager of the City of El Cerrito, or his/her designee.
- H. "Commercial cannabis use" means any commercial cannabis activity licensed pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, including but not limited to cultivation, possession, distribution, transportation, laboratory testing, labeling, retail, delivery, sale, processing, storing, packaging or manufacturing of cannabis or cannabis products for medical or recreational use. Commercial cannabis use includes cannabis retail.
- I. "Cannabis delivery" means a commercial transfer of cannabis or cannabis products from a fixed location to a destination specified by a customer.
- J. "Medical cannabis" means cannabis that is intended to be used for medical cannabis purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.7 *et seq.*), the Medical Marijuana Program Act (Health and Safety Code section 11362.7 *et seq.*) and the Medical Cannabis Regulation and Safety Act (Business and Professions Code section 19300 *et seq.*).
- K. "MAUCRSA" refers to the California State law entitled Medicinal and Adult-Use Cannabis Regulation and Safety Act and regulations promulgated thereunder.
- L. "Operating Permit" shall mean a permit issued by the City pursuant to this chapter for the operation of a cannabis business within the City.
- M. "Specific Plan" shall mean the San Pablo Avenue Specific Plan, as it may be amended.

6.80.030 Applicability.

Commercial cannabis uses shall be permitted only in compliance with the requirements of this chapter, state law and all applicable requirements of the El Cerrito Municipal Code and an operating permit issued pursuant to this chapter. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to commercially cultivate, distribute, process, manufacture, sell, deliver, or test cannabis, in amounts that exceed personal use allowances under California law, within the City without a valid permit issued pursuant to the provisions of this chapter. Cultivation of cannabis for noncommercial use shall only be permitted inside a private residence or inside an enclosed structure upon the grounds of a private residence, and pursuant to the provisions of the MAUCRSA. Possession of other types of State or City permits or licenses does not exempt an operator from the requirement of obtaining a permit under this chapter.

6.80.040 Limitations on Use.

Commercial cannabis uses shall only be allowed in compliance with this chapter and all applicable codes set forth in the El Cerrito Municipal Code, including but not limited to: building, plumbing, electrical, fire, hazardous materials, and public health and safety. The operator shall comply with all laws and regulations applicable to the type of use, and shall comply with all permit, license, approval, inspection, reporting and operational requirements of other local, state or other agencies having jurisdiction over the type of operation. Commercial cannabis uses shall only be permitted in areas of the City in which such uses are permitted or conditionally permitted by the Zoning Ordinance of this Municipal Code. Cannabis retail is considered to be a category of retail within the meaning of and as that term is used in the Zoning Ordinance of this Municipal Code. The operator shall provide copies of other agency and department permits, licenses, or certificates to the City to serve as verification for such compliance. No other type of cannabis uses are permitted within the city.

6.80.050 Operating Permits.

An operating permit shall be required for all cannabis businesses operating within El Cerrito. The form and content of the application for an operating permit shall be specified by the City and shall include the following minimum information, which will be evaluated as part of the consideration of whether to approve an operating permit:

- A. Identifying information for ownership and management. The name and address of each cannabis business owner and an explanation of the legal form of business ownership.
- B. Description of the proposed site. The site address, description of the premises, name and address of the property owner(s) where the cannabis business will be located, and a site plan and floor plan(s) of the proposed cannabis business.
- C. Conceptual elevations of the building proposed to contain the cannabis business and any other necessary information that demonstrates the proposed means of compliance with the standards of the San Pablo Avenue Specific Plan.
- D. Additional identifying information for owners and key employees. Each cannabis business owner, as well as each employee shall submit specific personal information including names, birth dates, addresses, social security numbers, relevant criminal history, relevant work history, names of businesses owned or operated by the applicant within the last ten (10) years, investor or partner information, and electronic fingerprint images and related information as required by the Chief of Police for the purpose of obtaining information as to the existence and content of a record of State or Federal convictions and arrests.
- E. Description of proposed operations. A description of the nature of the proposed commercial cannabis use, product types, average or expected sales amounts by product type, average or expected amount of cannabis storage, and sources of cannabis.

- F. Proof of State license compliance. A description of the specific State cannabis license(s) or permits that the applicant has obtained or plans to obtain. The applicant shall describe how the business will meet the State licensing requirements.
- G. Information regarding other local licenses. A description of the specific cannabis licenses or permits that the applicant(s) has obtained or plans to obtain from other local jurisdictions.
- H. Disclosure of litigation and legal proceedings. A description of any litigation in which the applicant(s) has been involved within the ~~five~~ ten years immediately preceding the date of the application and a statement of whether any business currently operated by the applicant(s) or operated by the applicant(s) within the ten years immediately preceding the date of the application has been investigated or the permit or license authorizing the operation of such business has been revoked or suspended within the ten years immediately preceding the date of the application.
- I. Security Plan. A description and documentation of how the applicant will secure the premises at all times. The security plan shall include, but is not limited to, the following:
 - 1. A site security plan shall be required at the time of permit application and shall be subject to review and approval by the Chief of Police and the City Manager. All site security plans shall be held in a confidential file, exempt from disclosure as a public record pursuant to Government Code Section 6255(a). Such plans shall include, at a minimum, information regarding the implementation of the requirements of this section. The Chief of Police may require additional information, including but not limited to, if required, identification of on-site security personnel and proper certification of personnel, be included in the site security plan.
 - 2. Measures for preventing individuals from remaining on the premises if they are not engaged in authorized activity.
 - 3. Measures to prevent smoking of cannabis and cannabis products and any other consumption or use of cannabis or cannabis products on the premises.
 - 4. Measures for disposing of expired, contaminated, adulterated, deteriorated, or excess cannabis products.
 - 5. Measures for preventing off-site impacts to adjacent businesses or properties.
 - 6. Measures for limiting the amount of cash held on the premises.
- J. Certificate of insurance. Certificate of insurance demonstrating ability to comply with the insurance requirements contained under Performance Standards in this chapter.
- K. Community benefits of the proposed cannabis business. A description of the benefits that the cannabis business would provide to the local community, such

as employment for residents of the City, community contributions, improvements to the property where the cannabis business is proposed to be operated and adjoining properties, or economic incentives to the City.

- L. Signature of applicant(s) and property owner(s). The application shall be signed by all applicants, certifying, under penalty of perjury, that all information submitted as part of the application process is, to the best of the applicant's knowledge, true, accurate, and complete. The application shall be signed by all property owners of the location where the cannabis business will be located, certifying, that the property owner(s) has/have reviewed the application and approves the use of the property for the purposes stated in the application.
- M. Hazardous Materials. To the extent that the applicant intends to use any hazardous materials in its operations, the applicant shall provide a completed building occupancy classification form, identifying all hazardous materials proposed for storage, use or handling on the premises, including compressed and cryogenic gases such as carbon dioxide, nitrogen, and others. "Hazardous materials" includes any hazardous substance regulated by any federal, state, or local laws or regulations intended to protect human health or the environment from exposure to such substances.
- N. Pro forma. Three years of pro forma estimates for operations, including a discussion of the business assumptions used to develop the estimates. Example assumptions include revenue, customer volume, visits, and product costs, compensation of employees, equipment costs, utility costs, and other operation and maintenance costs.
- O. Fees. An application fee established by the City Council. The applicant shall also be responsible for reimbursing the City for the cost of any staff time and City resources, in excess of the application fee, expended on the application process.

6.80.060 - Application Process.

- A. The City shall issue no more than two (2) valid operating permits for cannabis businesses in the City. The following activities shall be permitted:
 - 1. Cannabis retail by a cannabis storefront business.
 - 2. Cannabis delivery to locations within El Cerrito by cannabis storefront businesses possessing an operating permit in El Cerrito.
- B. The City reserves the right to reject any or all applications. Prior to permit issuance, the City may also modify, postpone, or cancel any request for applications at any time without liability, obligation, or commitment to any party, firm, or organization. Applicants for permits assume the risk that the City may elect to terminate or not issue permits for any commercial cannabis uses at any time

prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application.

- C. Review of application. The City Manager shall consider applications for operating permits and shall have the authority to approve or disapprove operating permits. In approving or disapproving such permit, the City Manager shall give particular consideration to the capacity, capitalization, and history of the applicant, the community benefit provided by the business and any other factors that the City, in its discretion, deems necessary to maintain health, safety, and general welfare of the public.
- D. Public notice.
 - 1. At least 21 days prior to approval of an operating permit, the City Manager shall provide notice by First Class mail to all property owners of record, residents and businesses within a 300-foot radius of the proposed cannabis business and any person or group that has specifically requested in writing notice regarding applications for cannabis businesses. The notice shall contain the following information:
 - a. A general description of the proposed cannabis business, the content of the application, and the property included in the application, as well as the proposed conditions of approval;
 - b. The name(s) of the applicant(s);
 - c. The location and times at which the complete application may be viewed by the public;
 - d. A statement describing how and the deadline to submit written comments.
 - 2. In lieu of providing notice 21 days prior to approval, the City Manager may hold a public hearing and provide notification of the hearing pursuant to Section 19.32.050.
 - 3. The City Manager may consider any written comments received regarding a proposed cannabis business application and modify proposed conditions of approval or take any other action with regard to the application authorized by this chapter.
- E. Conditions. The City Manager shall have the authority to impose conditions on operating permits deemed necessary to maintain the health, safety, and general welfare of the public.
- F. Disqualification. The following items may disqualify an application from consideration:
 - 1. The cannabis business owner has knowingly made a false statement in the application or any other information furnished to the City.
 - 2. The cannabis business owner or any employee 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. However, prior

marijuana or cannabis conviction shall not be an automatic bar to approval for an operating permit.

- G. Confidentiality. The security plan and operations plan required by Section 6.80.50 shall be confidential and shall not be subject to public inspection or disclosure except as may be required by Federal, State or local law.
- H. Signed Affidavit. The property owner and applicant, if other than the property owner, shall sign the application for the operating permit, and shall include affidavits agreeing to abide by and conform to the conditions of the permit and all provisions of the El Cerrito Municipal Code pertaining to the establishment and operation of the cannabis business, including, but not limited to, the provisions of this Section. The affidavit(s) shall acknowledge that the approval of the cannabis permit shall, in no way, permit any activity contrary to the El Cerrito Municipal Code, or any activity which is in violation of any applicable local or state laws and regulations.
- I. The City will review and evaluate all necessary information related to the proposed commercial cannabis use and its proposed operators, including names, birth dates, addresses, social security numbers, relevant criminal history, relevant work history, names of businesses owned or operated by the applicant within the last ten (10) years, investor or partner information, and APN number of the parcel upon which the commercial cannabis use will be located. Certain private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety.
- J. The City will evaluate the Security Plan required by Section 6.80.50 in determining whether to approve an operating permit.
- K. Permit Term. The City Manager, or designee, may approve operating permits for a maximum term of three (3) years.
- L. Indemnification. By accepting an operating permit, the 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 and 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 the permittee's operations, except such liability caused by the active negligence, sole negligence or willful misconduct of the City, its officers, agents, and employees. An applicant's agreement to indemnify, defend, and hold harmless the City shall be a condition of approval of an operating permit and a provision of the affidavit required by paragraph (G) of this section.

6.80.070 - Performance Standards.

The following standards shall apply to all cannabis businesses. Failure to comply with the following standards shall be grounds for suspension or revocation of an operating permit.

- A. Hours of operation. Cannabis businesses shall not be open to the public and shall not conduct retail sales or deliveries before 8:00 a.m. or after ~~8:00~~ 10:00 p.m. on any day of the week.
- B. Odor control. Odors shall be contained on the property on which the cannabis business is located.
- C. Alarm and video surveillance. Cannabis businesses must have security cameras installed, which shall be motion-sensored and capable of recording activity on the premises, including entry points to the property, and within all buildings and structures on the premises, including all entrances, exits, perimeter windows and all areas where customers and employees may have access, with the exception of any restroom area. Security cameras shall record 24 hours per day, 7 days per week. The premises shall be equipped with, and at all times be monitored by, a secure web-based surveillance system. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual committing a crime on the premises and the ability to capture license plates entering and exiting the premises. The operator shall provide the Chief of Police remote access of any on-site web-based video surveillance to monitor remotely at any time. The City of El Cerrito will only monitor video surveillance for law enforcement purposes related to in-progress or past crimes committed on the premises of a cannabis business. Additionally:
 - 1. Areas where cannabis is stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.
 - 2. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, manufacturing or labeling activities occur. Cameras shall be positioned to record all weighing, packaging, transport preparation, processing, manufacturing or labeling activities.
 - 3. At least one camera must be dedicated to record the access points to the secured surveillance recording area.
 - 4. At each point-of-sale location, camera coverage must enable recording of the customer(s) and employee(s) facial features with sufficient clarity to determine identity.
 - 5. Surveillance video shall be kept for a minimum of sixty (60) days in a format that can be easily accessed for viewing. Operators shall be required to cooperate with all law enforcement investigations and provide video footage related to any such investigation upon request. Motion-sensor lighting and alarms shall be required and shall be professionally installed and monitored to insure the safety of persons and to protect the premises from theft. Alarm and surveillance systems shall be equipped with a failure notification system that

provides prompt notification to the operator of any prolonged surveillance interruption or failure of the system. All surveillance equipment, records and recordings must be stored in a secured area that is only accessible to management staff. Operators must keep a current list of all authorized employees who have access to the surveillance system or alarm system.

6. An operator shall maintain up-to-date and current records and existing contracts on the premises that describe the location and operation of each security alarm system, a schematic of security zones, the name of any alarm installation company, and the name of any monitoring company. All monitoring companies shall be licensed by the Bureau of Security and Investigative Services to monitor motion-sensor lighting and alarms. Off-site monitoring and video recording storage of the premises by the operator or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site monitoring.
7. All security measures installed on the premises shall have the capability to remain fully operational during a power outage.
8. Weapons and firearms are prohibited on the premises, unless authorized by the Chief of Police. This provision shall not apply to public officials engaged in official duty.
9. Security measures shall be designed to ensure emergency access in compliance with fire safety standards.
10. All structures used for commercial cannabis use shall have locking doors, with commercial-grade non-residential locks, to prevent free access.
11. Security measures shall prevent individuals from remaining on the premises of the cannabis business if they are not engaging in activities expressly related to the operations of the cannabis business.
12. Security measures shall include a transportation plan that details the procedures established for the safe and secure transport of cannabis, cannabis products, and currency to and from the cannabis business premises, including the transfer of currency for remitting City tax payments
13. Except for limited amounts of cannabis used for display purposes, samples, immediate sales, and other authorized uses, all cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault that meets approval of the Chief of Police. To the fullest extent possible, all cannabis and cannabis products shall be kept in a manner that prevents theft and loss, except for limited amounts used for the purposes of display or immediate sales.
14. Panic buttons shall be installed in all cannabis business premises with easy access by employees and all employees shall be properly trained on its use.

15. Any security bars installed on the windows or the doors of the cannabis business shall be installed only on the interior of the building in compliance with all applicable codes.
 16. Windows and roof hatches of the premises shall be secured from the inside with effective means so as to prevent unauthorized entry, and shall be equipped with latches or a similar mechanism that may be released quickly from the inside to allow exit in the event of emergency in compliance with all applicable provisions in this Code.
 17. Each cannabis business shall identify a liaison and provide contact information to the Chief of Police who shall be available at all times to meet with the Chief of Police regarding security measures and operational issues.
 18. Minimum lighting level of one-foot candle shall be provided at building entrances and in parking lot areas. All lighting shall be fully shielded, downward casting and not spill over onto structures, other properties or the night sky. Exterior lighting on the premises shall be balanced to complement the security/surveillance systems to ensure all areas of the premises are visible, and shall provide increased lighting at all entrances to the premises. The lighting required shall be turned on from dusk to dawn. The site security plan shall include a photometric plan meeting these requirements and fixture details if new or upgraded lighting is required.
- D. Insurance coverage. Cannabis businesses 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(1) or more persons, property damage and personal injury with limits of not less than one million dollars (\$1,000,000.00) per occurrence and comprehensive automobile liability (owns, nonowned, hired) providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one(1) or more persons, property damage and personal injury with limits of not less than one million dollars (\$1,000,000.00). 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 and additional insured.
- E. Ledger. Cannabis businesses shall 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. Such ledger shall be made available to the City for inspection during business hours upon reasonable notice by the Chief of Police.

- F. Inspections. To the extent permissible by law, the City shall have the right to enter and inspect any cannabis business for the purpose of ensuring compliance with the regulations of this chapter, provided that any such entry and inspection shall be conducted in a reasonable manner. The City shall also have the right to inspect any delivery vehicle for the purpose of ensuring compliance with the regulations of this chapter, provided that any such entry and inspection shall be conducted in a reasonable manner. Peace officers, whether in plain clothes or uniform, have the right to visit and inspect any cannabis business or delivery vehicle at any time during business hours without a search warrant, upon presentation of appropriate credentials. This includes inspection of all areas of the business premise or vehicle, including, but not limited to sales areas, back-of-house areas, store rooms, offices, closed or locked cabinets, safes, kitchens, and appurtenant buildings.
- G. Notification. Within twenty-four hours after discovering any of the following, a cannabis business shall notify the Police Department:
 - 1. Diversion, theft, loss, or any criminal activity involving cannabis or cannabis products or any agent or employee or permittee.
 - 2. The loss or unauthorized alteration of records related to cannabis or cannabis products, customers, employees or agents.
 - 3. Significant discrepancies identified between inventory records and inventory.
 - 4. Any other material breach of security.
- H. Onsite consumption. Cannabis shall not be consumed on the premises of a cannabis business.
- I. A cannabis business shall notify the Chief of Police within three (3) days of receiving any notices of violation or other corrective action ordered by a State agency or other local licensing authority, and shall provide copies of relevant documents.
- J. A cannabis business shall notify the Chief of Police within three (3) days of any staffing changes. New employees shall be subject to the same requirements of the initial application process.
- K. Deliveries. Deliveries within El Cerrito shall only be permitted by cannabis storefront businesses which have been granted an operating permit by the City. Deliveries shall be subject to the following standards:
 - 1. Any person who delivers cannabis shall have in possession a copy of all licenses and permits required by the State of California and the City.
 - 2. A licensed cannabis business which is authorized to conduct deliveries in El Cerrito shall provide to the Chief of Police a list of all vehicles to be used for delivery of cannabis and cannabis products, including the vehicle's make, model, year, license plate number and vehicle identification number. The

cannabis business shall update the list prior to any vehicle being added to or removed from service.

3. Cash shall be prohibited as a form of payment for cannabis delivery transactions at the delivery location. Payments shall be made via credit card, check, or other means of cashless payment or a cash payment shall be made in advance at the business location.
4. Delivery vehicles shall not be marked or otherwise identified with advertisements, the name of the cannabis business, or any other distinctive marking associated with cannabis.
5. Delivery of cannabis shall be directly to the residence or business address of the designated recipient; deliveries to any other location are prohibited.
6. Deliveries shall occur only between the hours of 8:00 a.m. and 8:00 p.m.
- L. ~~Retail business~~ Commercial Cannabis use conducted within buildings. No ~~production, processing, manufacturing,~~ distribution, storage, advertising, or display of cannabis or cannabis products shall be visible from the exterior of a building where a cannabis business is located.
- M. Cannabis businesses shall make all reasonable efforts to ensure that advertising and marketing of cannabis and cannabis products are not targeted to individuals less than 21 years of age.
- N. Regular meetings. The applicant shall schedule and be available for an in-person meeting with the City Manager and Chief of Police not less than once every 180 days. These meetings shall be used to discuss ongoing operation of the cannabis business and any modifications to the operating permit necessary to maintain peace, order, and welfare of the public. The City Manager may waive these meetings at his/her discretion.
- O. Operator Qualifications. Commercial cannabis operators must meet the following qualifications:
 1. Operators must be 21 years of age or older.
 2. Operators shall be subject to a background investigation by the Chief of Police at the time of application for a permit.

6.80.080 Location Requirements –Cannabis Storefront Retail Businesses

Cannabis storefront retail businesses shall only be permitted in the San Pablo Avenue Specific Plan Area and only on the San Pablo Avenue Commercial and San Pablo Avenue Community street types, as defined in the Specific Plan. Within the Theater District designation of the Specific Plan, Cannabis storefront retail businesses shall only be permitted in upper floor locations with access to an elevator or other means of accessibility approved by the Building Official.

- A. Land use buffers. No operating permit shall be issued for a cannabis storefront retail business within six hundred (600) feet of public and private schools and areas with youth populations, including:
 - 1. A public or private kindergarten, elementary, middle, junior high, or high school.
 - 2. A library open to the public.
 - 3. A publicly owned park (excluding the Ohlone Greenway and pocket parks as defined in the San Pablo Avenue Specific Plan) or recreation facility including, but not limited to, a clubhouse, community center, or public pool.
- B. No operating permit shall be granted for a cannabis storefront retail business within one thousand (1,000) feet of another licensed cannabis business.
- C. Distances. The distances set forth in this section shall be measured as a straight line, without regard to intervening structures or objects. Distances between cannabis storefront retail businesses and public and private schools and areas with youth populations shall be measured from the property line of the property containing the school or areas with youth populations to the outside wall of the tenant space of or, for single-occupancy structures, the outside wall of the structure containing the cannabis storefront retail business. Distances between cannabis storefront retail businesses shall be measured between the outside walls of the tenant spaces of or, for single-occupancy structures, the outside wall of the structure containing the cannabis storefront retail businesses.
- D. Nonconforming locations. Cannabis storefront retail businesses which become nonconforming after the issuance of an operating permit due to the establishment of any of the land uses listed in this section, may continue to operate as long as the business's operating permit remains valid.

6.80.090 – Renewal, nonrenewal, suspension, revocation, transfer, modification, or appeal.

- A. Permit renewal. A permit renewal application and any applicable fees shall be submitted at least sixty (60) days prior to the expiration of the operating permit. The City Manager shall have the authority to expire any operating permits for which a permit renewal application has not been submitted in accordance with this section. Thereafter, the City may open applications for the operating permit, and a cannabis business that previously held an operating permit shall have to file a new application. Permit renewal shall be subject to the laws and regulations in place at the time of renewal, and may require submittal of additional information to ensure applicable laws and regulations are met. No person or entity shall have any entitlement or vested right to receive an operating permit under this chapter.

- B. Violation and Noncompliance. The City Manager may refuse to renew an operating permit or may revoke or suspend an existing permit on the grounds that the cannabis business has failed to comply with the permit conditions or requirements of this chapter, or its State license has been revoked. The City Manager may additionally suspend or revoke an operating permit for any of the following causes:
1. Failure to comply with the operating permit conditions.
 2. Failure to comply with the plans and materials included with an approved operating permit.
 3. Conviction of the business owner or an employee who makes operational or management decisions that directly impact the business of an offence that is substantially related to the qualifications, functions, or duties of the cannabis business after an operation permit has been granted.
 4. Revocation of a State cannabis license or permit or any cause that would allow the State to deny or revoke a license under MAUCRSA.
 5. Failure to pay any applicable City taxes or fees after a reasonable period following notice of delinquency.
 6. Violation of any provisions of MAUCRSA or any provisions of this chapter.
 7. Violation of any other City statutes necessary to maintain the health, safety, and general welfare of the public.
- C. Transfer of Permit. Operating permits shall not be transferable to another location. However, operating permits may be transferred to another owner subject to the following requirements:
1. A request for change in permit ownership shall be submitted to the City at least 60 days prior to the anticipated change in business ownership.
 2. A new owner(s) shall meet all requirements for applicants of an initial permit and shall submit all information required for initial permits.
 3. All conditions of the operating permit shall apply to the new owner.
- D. Modifications to Permits. Any holder of an operating permit may request modifications to any aspect or condition of an operating permit at least thirty (30) days prior to the anticipated change. The City Manager, or designee, may approve such modifications at his/her discretion.
- E. Notice of Proposed Denial, Suspension, Revocation, or Refusal to Renew an Operating Permit. When the City Manager concludes that grounds for denial, suspension, revocation or refusal to renew or approve the transfer or modification of an operating permit exist, he/she shall serve the permit holder, either personally, by certified U.S. mail or overnight delivery service that provides tracking, addressed to the business or residence address of the permit holder, with a notice of his or her decision pursuant to this section. This notice shall state the reasons for the proposed action, the effective date of the decision, the right of

the applicant or permit holder to appeal the decision and that the decision will be final if no appeal is filed within the time permitted.

- F. Appeal. The right to appeal a decision of the City Manager pursuant to this section shall terminate upon the expiration of fifteen business days from deposit of the notice with the U.S. Mail, or deposit with an overnight delivery. All requests for appeals shall be submitted in writing to the City Manager and set for the reasons why the decision was improper.
1. A nonrenewal, revocation, or suspension shall be effective upon deposit of the notice in the U.S. mail or overnight delivery service.
 2. At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council.
 3. Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.
 4. The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing. The operator shall not operate the cannabis business while awaiting appeal.
 5. At the hearing, the appellant may present any information the appellant deems relevant to the decision appealed.
 6. At the conclusion of the hearing the City Council may affirm, reverse or modify the decision of the City Manager. The decision of the City Council shall be final.

6.80.100 Enforcement

- A. Violations.
1. Any activity performed contrary to the provisions of this chapter is hereby declared to be a public nuisance.
 2. Any violation of a term, condition, or the approved plans and specifications of any permit issued pursuant to this chapter shall constitute a violation.
- B. Remedies. In addition to the nonrenewal, suspension, and revocation provisions in Section 6.80.90 and any and all available remedies under the law, the following remedies shall be available to the City or other enforcement agency regarding violations of this chapter:
1. Administrative enforcement pursuant to Chapters 1.08 and 1.14 of the Municipal Code.
 2. Civil enforcement.
 3. Criminal enforcement.
- C. In any enforcement action brought pursuant to this section, whether by administrative or judicial proceedings, each person who causes, permits, suffers,

or maintains the unlawful cannabis use shall be liable for all costs incurred by the City, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible person to undertake, any abatement action in compliance with the requirements of this section. In any action by the agency having jurisdiction to abate unlawful cannabis uses under this section, whether by administrative or judicial proceedings, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this section shall be limited to those actions or proceedings in which the City elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

SECTION 3. Compliance with the California Environmental Quality Act. Approval of the amendments is exempt from environmental review in accordance with Business and Professions Code section 26055(h), the exemption for the adoption of an ordinance that requires discretionary review of permits. Additionally, approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of El Cerrito, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on November 21, 2017 and passed by the following vote:

AYES: Councilmembers Fadelli, Pardue-Okimoto, Quinto and Mayor Abelson
NOES: Councilmember Lyman
ABSENT: None
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on December 19, 2017 and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2017-07 of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 19th day of December 2017; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ____ day of December, 2017.

Cheryl Morse, City Clerk