



City of San Leandro

Meeting Date: September 16, 2013

Staff Report

File Number: 13-456

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report Requesting Direction from the City Council Regarding the Draft Medical Marijuana Dispensary Ordinance

Summary and Recommendations

Staff requests that the City Council provide direction regarding the DRAFT medical marijuana dispensary ordinance.

BACKGROUND

Since the expiration of the moratorium on the issuance of land use entitlements related to uses involving medical marijuana dispensaries expired on October 1, 2012 the City Council has reviewed, taken public comment, held several meetings and provided comments upon a draft ordinance that would allow the operation of and impose regulations upon two medical marijuana dispensaries in the City.

Staff requests direction on next steps staff should take related to the community's review of the ordinance. Two public presentations, one before the Board of Zoning Adjustments, and one before the Planning Commission, should be scheduled. Those two presentations will include a review of the proposed ordinance, and staff recommended amendments to the Zoning Code to bring the Zoning Code in compliance with the provisions of the proposed ordinance.

Analysis

The City had a moratorium on the issuance of land use entitlements, building permits, and business licenses for new medical marijuana dispensary related operations in the City. The moratorium was passed, and subsequently extended pursuant to City Council findings that included, amongst others, uncertainty regarding the legality of dispensaries as legitimate means of complying with State and Federal law under the Compassionate Use Act, and Medical Marijuana Program Act, and various jurisdictions' efforts to ban, regulate, and raise

revenue from such operations.

On July 16, 2012, pursuant to an appellate court decision that prohibited local jurisdictions from banning medical cannabis dispensary operations (***County of Los Angeles v. Alternative Medicinal Cannabis Collective*** (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1)), the City Council decided that it would allow the moratorium to expire. The City Council also directed the City Council Rules and Communications Committee to develop an ordinance and amendments to the Zoning Code to allow a limited number of dispensaries to operate in the City. That direction culminated in the draft proposed ordinance now before the City Council. Recommended Zoning Code amendments that conform to the proposed ordinance are also drafted, and would be presented, along with the proposed ordinance, to the City's Board of Zoning Adjustments for review and comment, and the Planning Commission for review, comment, and recommendation to the City Council.

In early May, 2013, the California Supreme Court held, in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.* (S198638), that cities and counties may pass outright bans on the establishment and operation of medical marijuana dispensaries within their jurisdictions. This case settled the issues called into question by several appellate court decisions (including *Alternative Medicinal Cannabis Collective*) on whether, notwithstanding the Compassionate Use Act and the Medical Marijuana Program Act, local agencies could enact land use and zoning regulations that could include an outright ban on medical marijuana dispensary operations. The law is now clear that cities may ban dispensaries, or regulate where, when, and how they operate.

To recap, the ordinance itself is modeled after the City of Oakland's 2011 amendments to its medical cannabis dispensary ordinance; the proposed ordinance also borrows from the City and County of San Francisco Department of Public Health's regulations related to edible cannabis product handling, labeling, and distribution. The ordinance is in strict compliance with the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. Staff also believes that the ordinance complies with the common law related to the establishment and operation of medical marijuana dispensaries.

Finally, the City Attorney has advised the City Council in past hearings and proceedings that the possession and distribution of marijuana is illegal under the Federal Controlled Substances Act. In a new memorandum dated August 29, 2013, the Justice Department ("Department") makes clear that marijuana remains an illegal drug under the Controlled Substances Act and that federal prosecutors will continue to aggressively enforce this statute. To this end, the Department identifies eight (8) enforcement areas that federal prosecutors should prioritize. These are the same enforcement priorities that have traditionally driven the Department's efforts in this area.

Outside of these enforcement priorities, however, the federal government has traditionally relied on state and local authorities to address marijuana activity through enforcement of their own narcotics laws. This guidance continues that policy. Thus, for states that have enacted laws to authorize the production, distribution and possession of marijuana, whether for medical or recreational uses, the Department expects these states to establish strict regulatory schemes. Based on assurances that those states will impose an appropriately strict regulatory system, the Department has informed the states that it is deferring its right to

challenge their legalization laws at this time. But if any of the stated harms do materialize—either despite a strict regulatory scheme or because of the lack of one—federal prosecutors will act aggressively to bring individual prosecutions focused on federal enforcement priorities and the Department may challenge the regulatory schemes themselves in these states. To summarize, if the City passes regulations in strict compliance with the California Attorney General’s Guidelines, and dispensaries operate in conformance with the City’s ordinance, staff is of the opinion that the likelihood of a raid of City approved dispensaries by Federal law enforcement agencies for violation of the Controlled Substances Act is low.

The ordinance’s main provisions are as follows:

- ❖ 2 valid permits are allowed;
- ❖ The City Manager may impose separate conditions of approval, including allowing later hours of operation;
- ❖ A public hearing on approval of a Dispensary permit must be held by the Board of Zoning Adjustments pursuant to the approval of a conditional use permit;
- ❖ Operating, security, recordkeeping, facilities, and signage regulations are set in the ordinance;
- ❖ Dispensaries may only be located in the City’s industrial and commercial zoning districts, and cannot be within 1,000 feet of a school, library, youth center, park and recreation facility, and another dispensary, and cannot be within 500 feet of a residential zone;
- ❖ On-site cooking and distribution of edible cannabis products is allowed and regulated to prevent the transmission of foodborne illnesses; and
- ❖ Payment of a non-refundable permit application fee, an annual permit renewal fee, and annual business license fee will be required at the amounts set by the City Council.

Previous Actions

October 4, 2010: The City Council passed An Interim Urgency Ordinance Prohibiting Consideration and Approval of Use Permits, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, or Other Land Uses that Could Be Proposed Should Prop 19 Be Approved by Voters for a Forty-Five Day Period

November 15, 2010: The City Council extended the Interim Urgency Ordinance to October 1, 2011.

May 16, 2011: The City Council heard and did not pass an ordinance that would prohibit the establishment of medical marijuana dispensaries in the City. The moratorium continued in effect.

June 18, 2012: The City Council directed staff to prepare an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 2, 2012: The City Council took no action on an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 16, 2012: The City Council directed the City Council Rules and Communications

Committee to work with staff on an ordinance that would permit the establishment and operation of medical marijuana dispensaries within the City.

November 7, 2012: The City Council Rules and Communications Committee approved the proposed ordinance, and forwarded it to City Council for review and comment.

December 3, 2012: Action item (Prior to the Action item, the City Council accepted the 11/07/2012 Rules and Communications Committee highlights and its recommendation to consider the proposed medical marijuana ordinance.). There was a consensus amongst the City Council members to hold a City Council work session in February 2013 to receive public input on the draft medical marijuana dispensary ordinance.

February 12, 2013: Special meeting: "Staff Presentations including Background Information and Next Steps for Development of Proposed Medical Marijuana Dispensaries Ordinance"

May 20, 2013: "City Attorney Report on City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. Regarding California Supreme Court's Decision on Medical Marijuana Dispensaries"

REQUEST FOR DIRECTION

Staff requests direction from the City Council on next steps related to the review and passage of the DRAFT ordinance. If the City Council were to forward the DRAFT ordinance as presented to the Board of Zoning Adjustments and the Planning Commission, the ordinance could be heard by the BZA on the first Thursday in October, and the Planning Commission would hear the ordinance on the third Thursday in October. The City Council could hold the first reading of the ordinance at the City Council's first regular meeting in November.

ATTACHMENTS

- DRAFT Medical Marijuana Dispensary Ordinance

PREPARED BY: Richard D. Pio Roda, City Attorney

2147720.1

CITY OF SAN LEANDRO

CITY COUNCIL

AN ORDINANCE ADDING CHAPTER 4-33 TO TITLE 4 OF THE SAN LEANDRO MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITS

NOW THEREFORE, the City of San Leandro City Council does hereby ordain:

Section I. Amendment to Title 4, PUBLIC WELFARE

San Leandro Municipal Code Title 4 is hereby amended to add the following Chapter, 4-33, as follows:

4-33-100 - Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

(a). "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use," issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

(b). "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin 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 the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant incapable of germination.

(c). "Cannabis Dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 *et seq.*

(d) "City" means the City of San Leandro, and any legislative body granted regulatory authority over Dispensary operations by this ordinance.

(e). "City Manager" means the City Manager of the City of San Leandro or his/her designee.

(f). "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

(g). "Cooperative" means a business organization recognized by the state of California through properly registered articles of incorporation under the Corporations or Food and Agricultural Code that conducts its business for the mutual benefit of its members, as described in the Attorney General Guidelines.

(h). "Medical Marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 *et seq.*, as such sections may be amended from time to time.

(i). "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

(j). "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended from time to time, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(k). "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means a person who is entitled to the protections of

California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 *et seq.*

(l). "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(m). "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

4-33-200 – Dispensary Permit required and Application for Permit.

(a) Except for hospitals, it is unlawful for any owner, operator, collective, cooperative, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any Dispensary in the City of San Leandro unless there exists a valid Dispensary permit in compliance with the provisions of this Chapter.

(b) This Chapter does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a Dispensary permit under this Chapter, but must comply with all applicable State Laws and the Attorney General Guidelines.

(c) The City shall issue no more than two (2) valid permits for the operation of dispensaries in the City.

(d) In addition to the requirements specified in Chapter 2-2 related to Business Licenses, the permit application for a Dispensary shall set forth the following information:

(1) Unless it is determined by the City that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such Dispensary is not within one thousand (1000') feet of a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facilities, and another Dispensary and five hundred (500') feet from a residential zone. The proposed Dispensaries must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

(2) A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.

(3) A plan of operations that will describe how the Dispensary will operate consistent with the intent of State law, the provisions of this Chapter, the Attorney General Guidelines, the City's Municipal and Zoning Codes, and conditions of approval including but not limited to:

(i) Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers; and

(ii) Controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.

(iii) A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft and burglary, and patrons and customers from robbery. The security plan shall be reviewed by the Police Department and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

(iv) Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

(e) The City Manager shall designate the investigating official to whom an application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, such designee shall give particular consideration to the capacity, capitalization, and history of the applicant and any other factors that in the City's discretion it deems necessary to maintain the peace, order and welfare of the public. The City Manager on his or her own power and in addition to any other conditions of approval imposed by any other City departments, boards, commissions or legislative bodies, may impose any conditions on a Dispensary permit he or she deems necessary to maintain the peace, order, and welfare of the public.

(f) At the time of submission of a Dispensary permit application, the applicant shall pay a non-refundable Dispensary permit application fee. The fee amount shall be set by the City Council.

(g) The issuance of a Dispensary permit shall not be effective until the permit applicant has received all other permits and approvals required by the City's ordinances, rules and regulations, including but not limited to any conditional use permit and building permit, and paid all fees.

4-33-300 – Compliance with State Law and Municipal Code.

(a) A Dispensary must comply with all applicable state and local laws, policies, rules and regulations, including but not limited to the California Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, the San Leandro Municipal Code, the San Leandro Zoning Code, and the San Leandro Administrative Code including any and all rules and regulations related to the land use entitlement process, Dispensary operations, annual Dispensary permit fee, annual business license fee, and the Americans with Disabilities Act to be in compliance with the Dispensary permit.

The Dispensary must comply with any and all Conditions of Approval imposed upon it pursuant to any land use permit or entitlement granted.

Failure to comply with the Conditions of Approval or any conditions imposed upon a Dispensary permit by the City Manager, and all applicable local and state laws or regulations, and failure to pay when due all fees may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City's nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution as defined in San Leandro Municipal Code Chapter 1-12.

4-33-400 – Renewal of Permits

(a) Dispensary Permits must be renewed annually. Permit Holders shall contact the City's Community Development Director in writing no later than forty-five (45) days before the expiration of the current permit to begin the renewal process. At that time, the Dispensary shall submit verification of a current Business License, audited financial statements for the previous permit term, and any other requested financial documents or information as required by the San Leandro Municipal Code or the Dispensary's Permit.

As part of the annual renewal process the Dispensary shall be inspected by the Building Inspector and Fire Marshall or their designees. Violations of the San Leandro Municipal Code shall be corrected within a reasonable time, as determined by the Building Inspector, Fire Marshal or his/her designee. The Dispensary shall provide proof to the City that there are no outstanding violations of the San Leandro Municipal Code.

(b) A Dispensary Permit will not be renewed without payment of the annual renewal fee, or any other fees on such operations established by the City Council.

4-33-500 - Performance standards.

(a) Operations

A Dispensary shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the Dispensary's Permit to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and this Municipal Code, and to mitigate any potential adverse impacts of the Dispensary on the public health, safety, and welfare.

(1) A Dispensary shall provide the City, the Chief of Police, and all neighbors located within fifty (50) feet of the premises with the name, phone number, facsimile number and email address of an on-site community relations staff person that can be contacted related to Dispensary issues, twenty-four hours a day, seven days a week.

(2) Medical marijuana shall only be distributed by a Dispensary at the property identified and approved as the location for the Dispensary on the Dispensary permit application.

(3) A Dispensary shall only provide, distribute, dispense, or give medical marijuana to qualified patients or primary caregiver members. It is within the City's discretion to limit the number of members allowed per Dispensary.

(4) Only qualified patients, caregivers, and their guests shall be allowed inside of a Dispensary. The Dispensary shall comply with all occupancy rules imposed by State law or the Fire Marshal.

(5) A Dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the Dispensary should only be an amount necessary to cover overhead costs and operating expenses. Retail sales of medical marijuana that violate California law or this ordinance are expressly prohibited.

(6) A Dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. A Dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature marijuana plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. For purposes of determining the quantity of marijuana, only the dried mature processed flowers of female cannabis plants or the plants conversion shall be considered.

(7) A Dispensary may operate no later than 7pm daily unless it is determined by the City that a later hour will not affect public health, safety, or welfare. A Dispensary is prohibited from operating between the hours that the City determines the Dispensary should close and 9 a.m. the next ensuing day unless further restricted by the City.

(8) Dispensaries shall disclose the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabiniol in medical cannabis to qualified patients before providing medical cannabis.

(9) Dispensaries shall follow the directions of the City Manager or his/her designee regarding any medical cannabis found to be non-compliant with testing standards. These instructions extend to any

medical cannabis found to be unsafe on the basis of such testing results, or to the Dispensary's operations and practices generally.

(10) Representative samples of medical marijuana distributed by a collective or cooperative shall be analyzed by an independent laboratory to ensure it is free of harmful pesticides and other contaminants regulated by local, state or federal regulatory statutory standards. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level that exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith.

(11) Any medical marijuana provided to collective members shall be properly labeled in strict compliance with state and local laws, regulations and policies.

(12) Dispensaries shall not allow cannabis to be smoked, ingested or otherwise consumed on the premises. The term premises includes the actual building, as well as any accessory structures, parking areas, or other immediately surrounding areas.

(13) Dispensaries shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Dispensaries shall not operate as a restaurant, cafe or lounge serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of patients or primary caregivers.

(14) A Dispensary shall post a copy of the Business License Certificate issued by the City's Finance Department and a copy of the Cannabis Dispensary Permit issued by the City in a conspicuous place on the premises.

(15) The regulation of edible cannabis products shall be as follows:

(a) No edible cannabis products requiring refrigeration or hot-holding shall be manufactured for sale or distribution at a Dispensary, due to the potential for food-borne illness. Exemptions may be granted by the City, in consultation with the Alameda County Department of Public Health (DPH) on a case-by-case basis. For such exempted edible cannabis products, DPH may require a HACCP (Hazard Analysis and Critical Control Points) plan before approving the distribution of such medical cannabis products at a Dispensary. Such products requiring a HACCP plan may include ice cream and other dairy products.

(b) Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at a Dispensary.

(c) All items shall be individually wrapped at the original point of preparation. Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package. A warning that the item is a medication and not a food must be distinctly and clearly legible on the front of the package. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children. The label must also state that the product contains medical cannabis, and must specify the date of manufacture.

(d) Packaging that makes the product attractive to children or imitates candy is not allowed. Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the Dispensary. Deliveries must be in properly labeled opaque packages when delivered to a patient.

(e) Individuals conducting the manufacturing or sale of products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible cannabis products.

(f) In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible cannabis products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Anyone who has sores or cuts on their hands must use gloves when preparing and handling edible cannabis products.

(g) Edible cannabis products for sale or distribution at a Dispensary must have been prepared by a member of that Dispensary. No non-member edible cannabis products are allowed for sale or distribution at a Dispensary.

(h) A patient or primary caregiver who produces edible cannabis products that are sold at more than one Dispensary in the City or Alameda County must become a State certified food handler. If more than one person is involved in producing edible cannabis products at one facility, only one person needs to be certified. The valid certificate number of the member who has prepared the edible cannabis product must be on record at the Dispensary where the product is sold or distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

(16) All employees responsible for the handling, processing, dispensing, providing and cultivation of marijuana must be members of the Dispensary. Prior to employment, the employee members must be fingerprinted (through a Live Scan) for the purpose of conducting a background check. The purpose is to determine whether the employee has been convicted or plead guilty, plead for or was granted entry into a diversion program in lieu of conviction for, or plead *nolo contendere* to the following criminal offenses, or their equivalent if arising out of state:

- i) Health and Safety Code Sections 11350 *et al* (pertaining to controlled substances, with the exception of marijuana related offenses)
- ii) Penal Code Section 187 (homicide)
- iii) Penal Code Section 207 (kidnapping)
- iv) Penal Code Section 211 (robbery)
- v) Penal Code Sections 240-248 (assault & battery)
- vi) Penal Code Section 261 (rape)
- vii) Penal Code Section 314 (indecent exposure)
- viii) Penal Code Section 450 (arson)
- ix) Penal Code Sections 458-464 (burglary)
- x) Penal Code Sections 470-483.5 (forgery)
- xi) Penal Code Sections 484-502.9 (larceny)
- xii) Penal Code Sections 503-515 (embezzlement)

The employee applicant must contact the Chief of Police for information related to the processing and cost of the fingerprinting, and any costs must be paid for in advance by the employee applicant. The background check shall review the last five (5) years of the employee applicant's criminal history. If the background investigation determines the employee has been convicted of one of the above offenses, the Dispensary shall no longer employ the member as an employee.

(b) Recordkeeping

The Dispensary shall maintain records of its members using only the State of California Medical Marijuana Identification Card number issued by the County or the County's designee, pursuant to California Health and Safety Code Section 11362.7 *et seq.*, or a copy of the written doctor's recommendation, as a protection for the confidentiality of the cardholders. The Dispensary shall track when members' medical marijuana recommendations and/or identification cards expire and enforce conditions of membership by excluding members whose identification cards or recommendations are invalid or expired. The Dispensary shall maintain member records in a manner to protect confidential information in the records if the records contain information protected by applicable law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Public Law 104-191. A Dispensary shall exclude members who are caught diverting marijuana for non-medical use. All membership records shall be maintained on site.

(1) A Dispensary shall, by using the patient or caregiver's identification number, keep an accurate account of the number of members that visit the Dispensary each month, and also for the entire permit year.

(2) Within thirty (30) days of the end of a calendar quarter, the Dispensary shall provide the City a count of the total number of members of the Dispensary and the number of Dispensary visits by each member during the previous calendar quarter.

(3) Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City a listing of the medical marijuana products for sale during the previous calendar quarter, the prices of such products, and the end of quarter quantity on hand, listed in the applicable units, for each product.

(4) The Dispensary shall keep accurate records, follow accepted cash handling practices and maintain a general ledger of cash transactions. The Dispensary shall maintain records of all members' contribution of labor, resources or money to the Dispensary.

(5) The Dispensary shall allow the City to access the books, records, accounts and all data relevant to its operations for purposes of conducting an audit or examination to determine compliance with the Municipal Code, Administrative Regulations, conditions of approval, and applicable laws. Books, records, accounts and all relevant data shall be produced no later than twenty-four (24) hours after receipt of the City's request.

(6) The Dispensary shall maintain a log of patient complaints and shall make the log available to the City upon request. The log shall contain at a minimum the date of the complaint, the complaining patient's identification number or reference to his/her written recommendation, the nature of the complaint, and the action taken by the Dispensary to address the complaint.

(c) Facilities

(1) A Dispensary must be located at least one thousand feet (1000') from a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facilities, and another Dispensary and five hundred feet (500') from a residential zone.

(2) The Dispensary shall not permit any breach of peace inside of the Dispensary or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct.

(3) The City may impose Dispensary facility size and height conditions to preserve the public health, safety, and welfare of surrounding properties.

(4) The Dispensary shall be designed with sufficient sound absorbing insulation so that the noise generated inside the Dispensary is not audible on the premises, beyond that of normal commercial offices, or public rights-of-way, or any other building or other separate unit within the same building as the Dispensary.

(5) The Dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the Dispensary is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the Dispensary, if the use only occupies a portion of a building.

(6) The Dispensary shall provide litter removal services twice (2) each operating day on and in front of the premises and on public sidewalks within one hundred feet (100') of the Dispensary.

(d) Security

(1) Security cameras shall be installed and maintained in good condition, and the camera and recording system must be of adequate quality, color rendition and resolution to allow the identification of an individual. The cameras shall be in use 24 hours a day, 7 days per week, and shall cover the marijuana dispensing areas, storage areas, all doors and windows to the Dispensary, parking areas and other areas as determined by the Chief of Police. The recordings shall be maintained at the Dispensary property for a period of sixty (60) days.

(2) The Dispensary shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 *et seq.* and whose agents are properly licensed and registered under applicable law.

(3) During Business Hours, the Dispensary shall provide a minimum of three (3) security guards duly licensed by the State of California, Department of Consumer Affairs. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms or tasers.

(4) Security guard duties shall include, but are not limited to, ensuring no person smokes any substance within twenty-five feet (25') of any building entrance, exit, window and air intake vent.

(5) The Dispensary shall direct its security guards to monitor the outside of the premises for loitering and unlawful sale of medical marijuana by members. Security guards shall be directed to report to the Dispensary all unlawful sales of medical marijuana by members. The Dispensary shall immediately cease providing medical cannabis to the reported member, and make a report within twenty-four (24) hours to the Chief of Police, and the Alameda County Health Department and/or the doctor that issued the medical marijuana recommendation for the member. The Dispensary shall keep a record of all incidents where members unlawfully provided marijuana to non-members. The Dispensary shall inform patients and

primary caregivers about this provision and remind them that it is unlawful for them to sell medical cannabis to non-members.

(6) Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry and also equipped with latches that may be released quickly from the inside to allow exit in the event of an emergency.

(7) The Dispensary shall maintain adequate exterior lighting in parking areas.

(e) Signage

(1) Exterior signage for a Dispensary shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated.

(2) The Dispensary shall, within sixty (60) days of the issuance of the Dispensary permit, post and thereafter maintain signs inside the Dispensary where they may be easily read by members. Each sign shall be white with black lettering, and shall comply with the following regulations regarding text, size and content:

Sign 1: Font size at least 1 inch; Overall size at least 18" by 33"

PATIENT NOTICE

1. YOU HAVE THE RIGHT TO HAVE YOUR PRODUCT REWEIGHED AND SUPPLEMENTED IF IT IS UNDER THE STATED WEIGHT AT THE TIME OF PURCHASE.

2. IF YOU DO NOT HAVE A VALID STATE OF CALIFORNIA IDENTIFICATION CARD ISSUED BY ALAMEDA COUNTY HEALTH DEPARTMENT, THIS DISPENSARY MUST CONFIRM YOUR MEDICAL NEED FOR MARIJUANA. IF YOU HAVE A VALID IDENTIFICATION CARD, YOU SHOULD NOT BE ASKED FOR ADDITIONAL INFORMATION, UNLESS OTHER HEALTHCARE SERVICES ARE BEING PROVIDED.

Sign 2: Font size at least 1 inch; Overall size at least 18" by 33"

TO REGISTER COMPLAINTS ABOUT THIS DISPENSARY PLEASE CONTACT _____

Sign 3: Font size at least 1 inch; Overall size at least 23" by 32"

THE DIVERSION OF MARIJUANA FOR NONMEDICAL PURPOSES IS A VIOLATION OF STATE LAW.

Sign 4: Font size at least 1 inch

THE USE OF MARIJUANA MY IMPAIR A PERSON'S ABILITY TO DRIVE A MOTOR VEHICLE OR OPERATE HEAVY MACHINERY.

Sign 5: Font size at least 1 inch

LOITERING AT THE LOCATION OF A MEDICAL CANNABIS DISPENSARY FOR AN ILLEGAL PURPOSE IS PROHIBITED BY CALIFORNIA PENAL CODE SECTION 647(h).

Sign 6: Font size at least 1 inch

THIS MEDICAL CANNABIS DISPENSARY HAS RECEIVED A PERMIT TO OPERATE FROM THE CITY OF SAN LEANDRO

4-33-600 – Seller’s Permit Requirement.

The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit from the State Board of Equalization. Such permit shall be conspicuously displayed at the Dispensary. Failure to maintain the Seller’s Permit is grounds for revocation of the Dispensary permit.

4-33-800 Revocation, Suspension and Appeals.

For suspensions or revocations of Dispensary permits, the City shall follow the procedures set forth in San Leandro Zoning Code section 5-2906, unless the suspension shall be effective immediately by order of the City Manager or his or her designee pursuant to section 4-33-900 of the Municipal Code.

4-33-900 - Prohibited operations; Nonconforming Use and Immediate Suspension of Permit.

All dispensaries in violation of California Health and Safety Code Section 11362.7 *et seq.* and 11362.5 *et seq.*, this Chapter, or any other applicable State law are expressly prohibited. It is unlawful for any Dispensary in the City, or any agent, employee or representative of such Dispensary to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the Dispensary, or to violate any State law, or this Chapter. Any person arrested for violation of law, or acts expressly prohibited herein while upon, inside, or within 10 feet of the premises shall be just cause for immediate suspension of the Dispensary permit by the City Manager until such time that a hearing in accordance with San Leandro Zoning Code section 5-2906 is held, and a final decision made.

No use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the San Leandro Zoning Code, the San Leandro Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

4-33-110 - Liability.

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the city of San Leandro.

Section II. Severability.

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

Section III. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

Attest: _____

Marian Handa
City Clerk
City of San Leandro, California

1964161.1

1964161.3