



City of San Leandro

Meeting Date: September 19, 2016

Staff Report

File Number: 16-473

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Amendments to the Medical Cannabis Dispensary Ordinance to Facilitate the Issuance of a Third Dispensary Permit

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council review and consider for adoption the proposed amendments to the City's Medical Cannabis Dispensary Ordinance. The proposed changes are designed to achieve the following goals: 1) to allow a third dispensary permit to be awarded by the City Council; and 2) to eliminate the requirement that dispensaries be located at least 1,000 feet from another dispensary.

BACKGROUND & ANALYSIS

Following extensive dialogue with the community and numerous City Council discussions, on December 16, 2013, the City Council approved a medical cannabis dispensary ordinance to facilitate the approval, regulation and operation of medical cannabis dispensaries in San Leandro. Contained within that ordinance was Section 4-33-200(c), which stated: "The City shall issue no more than one (1) valid permit for the operation of dispensaries in the City." On September 8, 2015, the City Council subsequently awarded the City's first dispensary permit to Harborside San Leandro (HSL).

Based upon subsequent direction provided at the December 21, 2015 and February 16, 2016 regular meetings, the City Council on June 6, 2016 adopted an amendment to the ordinance to allow the award of a second dispensary permit. As part of that action, the Council also adopted various other changes to align the ordinance with the Medical Marijuana Regulation and Safety Act (MMRSA), and incorporate suggestions from the first permit awardee that would better support the smooth operation of dispensaries once they open their doors to patients, along with various other changes designed to ensure best practices.

Following an application vetting process, the City Council issued the City's second medical cannabis dispensary permit on July 18, 2016 to the Davis Street Wellness Center.

At the September 6, 2016 City Council meeting, the City Council directed staff to bring back for the Council's consideration further modifications to the City's adopted medical cannabis dispensary ordinance in order to: 1) allow the issuance of a third dispensary permit, and 2) to eliminate the requirement that any dispensary be located at least 1,000 feet from another dispensary. A modified version of the ordinance showing those changes is attached to this staff report. Should the City Council decide to adopt the modified ordinance, staff will return to the City Council on October 17, 2016 with follow-up recommendations regarding the award of the third dispensary permit.

As part of its action on September 6th, the Council will also examine a potential condition of approval on the third dispensary permit that would prohibit the dispensing of cannabis prior to June 1, 2017. Should the Council wish to impose such a requirement, staff will ensure that it is included as a draft condition of approval within the recommended draft permit that is presented for the Council's consideration on October 17, 2016.

ATTACHMENT

- Draft Amended Dispensary Ordinance Showing Track Changes

PREPARED BY: Eric Engelbart, Deputy City Manager, City Manager's Office

ATTACHMENT

Ordinance Adding Chapter 4-33 to Title 4 of the San Leandro Municipal Code Pertaining to Medical Cannabis Dispensary Permits

CHAPTER 4-33

MEDICAL CANNABIS DISPENSARY PERMITS

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) "Authorized Invitee" shall mean any individual who is not a member of the dispensary who has been invited to the Dispensary by the General Manager or their designee for official business purposes.
- (c) "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.
- (d) "Cannabis Dispensary" or "Dispensary" shall mean a collective, ~~or~~ cooperative, or business 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.*
- (e) "City" means the City of San Leandro, and any legislative body granted regulatory authority over Dispensary operations by this ordinance.
- (f) "City Manager" means the City Manager of the City of San Leandro or his/her designee.
- (g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

(l) "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.*

(m) "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:
 - (i) 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).
 - (ii) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(n) "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 person, corporation, company, entity, 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)~~ three (3) 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, facilities for religious worship and incidental religious education 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.

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

(i) Controls to verify 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 employees and customers from robbery. The security plan

shall be reviewed by the Police Department and shall be a public record exempt from disclosure pursuant to California 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 paid all fees, and 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.

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, the Medical Marijuana Regulation and Safety Act, 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 in order 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 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's conditional use permit.

(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, or authorized invitees shall be allowed inside of a Dispensary. The Dispensary shall comply with all occupancy rules imposed by State law or the Fire Marshal. While inside of the dispensary authorized invitees shall wear a badge clearly indicating that they are a guest, and not a member of the Dispensary. The Dispensary shall not dispense cannabis to an authorized invitee. The Dispensary shall keep a record of the name and identification number of all authorized invitees who have visited the dispensary, a log of which shall be shared with the City every three months and/or made immediately available to the City Manager or his/her designee upon request.

(5) 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 8:00pm 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 9:00 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 cannabinol in medical cannabis or products containing 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 the Dispensary or an independent laboratory, if and when such is available, 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. A Dispensary shall keep and maintain

current records of samples tested.

(11) Any medical marijuana provided to collective members or patients 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. .

(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:

If the dispensary chooses to manufacture edibles, it shall do so according to the rules promulgated by the Medical Marijuana Regulation and Safety Act or other relevant state laws, as periodically amended by the State Legislature and interpreted by the Courts and/or relevant regulatory agencies. Any edibles sold at the dispensary shall be manufactured and labeled according to the safety, labelling, and manufacturing guidelines established in the Medical Marijuana and Safety Act as periodically amended by the Legislature and/or interpreted by the Courts and associated regulatory agencies. In addition, the following local regulations governing edible cannabis products shall apply until such time as relevant State regulations are adopted and in effect:

(i) 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.

ii) 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.

iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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. The state certification number of the owner or operator of the Dispensary, upon issuance by the State, shall be kept on record at the Dispensary and made available for inspection upon request.

(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 a written doctor's prescription or 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, facilities for religious worship and incidental religious education, ~~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) High definition security cameras or other technology that produces high

resolution video and recording capabilities 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 fifteen (15) days. An additional forty-five (45) days of records shall either be maintained physically on site or may instead be stored offsite so long as such records are made available electronically within two hours upon request by the City for purposes of criminal investigation.

(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 where required by fire prevention or building code regulations.

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

(e) Signage.

(1) Exterior signage for a Dispensary shall be limited to the provisions applicable to commercial properties as outlined in the San Leandro Zoning Code, Article 18, Section 4-1806: "Regulations for On-Premises Signs".

(2) The Dispensary shall, prior to issuance of any occupancy 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, OPERATE HEAVY MACHINERY, OR RIDE A BICYCLE.

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, A COPY OF WHICH SHALL BE MADE AVAILABLE FOR INSPECTION UPON REQUEST

Sign 7. Font size at least 1 inch

PATIENTS ARE PROHIBITED FROM ENTERING EMPLOYEE-ONLY AREAS

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.

4-33-700 – 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.

4-33-800 – 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 The Medical Marijuana Regulation and Safety Act or any other relevant 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.

4-33-900 – 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.

DRAFT



City of San Leandro

Meeting Date: September 19, 2016

Ordinance

File Number: 16-474

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending Title 4, Chapter 4-33 of the San Leandro Municipal Code Pertaining to Medical Cannabis Dispensary Permits

Section 1. RECITALS

WHEREAS, in 2013, the City Council for the City of San Leandro adopted an ordinance that established a procedure by which it could award permits for the dispensing of medical cannabis, in accordance with State law. That ordinance is Chapter 4-33 of the San Leandro Municipal Code; and

WHEREAS, the City Council also amended the Zoning Code to establish the land use parameters for the location of medical cannabis dispensaries; and

WHEREAS, the City Council analyzed, prepared and adopted its ordinance on the State law prevailing at the time, namely the Compassionate Use Act (Prop. 215, 1996), the Medical Marijuana Program Act (SB 420, 2003), and the California Attorney General's Guidelines for the non-diversion of cannabis (2008); and

WHEREAS, the City Council amended the ordinance as necessary to comply with changes to State law, most recently to comply with AB 243, the Medical Marijuana Regulation and Safety Act, which is an amalgam of three bills that deal with different aspects of licensing and regulating commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and

WHEREAS, the City Council, with the assistance and analysis of staff, has evolved its position on the dispensing of medical cannabis within the City, including the placement of a ballot measure on the 2016 general election ballot to establish a cannabis business tax; and

WHEREAS, the City Council finds that based upon and subject to its ordinance, and current State law, legal and procedural safeguards are in place to mitigate the primary and

secondary effects on public health, and safety that medical cannabis dispensaries present.

Now therefore, the City Council for the City of San Leandro does **ORDAIN** as follows:

SECTION 2. AMENDMENT OF CODE. Title 4, Chapter 4-33 of the San Leandro Municipal Code is hereby amended to read as follows:

“CHAPTER 4-33

MEDICAL CANNABIS DISPENSARY PERMITS

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) “Authorized Invitee” shall mean any individual who is not a member of the dispensary who has been invited to the Dispensary by the General Manager or their designee for official business purposes.

(c) “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.

(d) “Cannabis Dispensary” or “Dispensary” shall mean a collective, cooperative, or business 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.*

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

(f) “City Manager” means the City Manager of the City of San Leandro or his/her designee.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

(k) "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.

(l) "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.*

(m) "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:
 - (i) 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).
 - (ii) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(n) "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 person, corporation, company, entity, 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 three (3) 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, facilities for religious worship and incidental religious education 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.

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

(i) Controls to verify 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 employees and customers from robbery. The security plan shall be reviewed by the Police Department and shall be a public record exempt from disclosure pursuant to California 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 paid all fees, and 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.

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, the Medical Marijuana Regulation and Safety Act, 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 in order 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 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's conditional use permit.

(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, or authorized invitees shall be allowed inside of a Dispensary. The Dispensary shall comply with all occupancy rules imposed by State law or the Fire Marshal. While inside of the dispensary authorized invitees shall wear a badge clearly indicating that they are a guest, and not a member of the Dispensary. The Dispensary shall not dispense cannabis to an authorized invitee. The Dispensary shall keep a record of the name and identification number of all authorized invitees who have visited the dispensary, a log of which shall be shared with the City every three months and/or made immediately available to the City Manager or his/her designee upon request.

(5) 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