



City of San Leandro

Meeting Date: March 18, 2019

Staff Report

File Number: 19-148

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Jeff Kay
City Manager

BY: City Council

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Ordinance for Amendments to the Medical Cannabis Dispensary Ordinance (4-37) and to the Permitted Commercial Cannabis Activities Ordinance (4-39) to Facilitate Adult Use Sales and to Establish a Time Limitation for Commencement of Operations

SUMMARY AND RECOMMENDATIONS

Consistent with the City Council's policy direction that was provided at the February 19, 2019 City Council meeting, staff recommends that the City Council review and adopt the proposed amendments to the City's Cannabis Dispensary Ordinances. The proposed changes are designed to: 1) allow the City's three previously permitted dispensaries to conduct retail sales of cannabis for adult use; and 2) establish a December 31, 2019 deadline for dispensaries to commence operations and begin serving customers; failure to meet this deadline would result in automatic revocation, without prejudice or recourse, of a dispensary's City issued operating permit. Without such a permit, notwithstanding whether a dispensary has a valid State issued permit, it may not legally operate in San Leandro.

BACKGROUND & ANALYSIS

At the February 19, 2019 City Council meeting, the City Council directed staff to bring forward proposed amendments to the City's adopted cannabis dispensary ordinance and permitted commercial cannabis activity ordinance that would facilitate sales of cannabis for adult use at the City's three previously permitted dispensaries.

The City Council also directed staff to incorporate into the authorizing resolution language that would concurrently impose a time limit, or "shot clock" that would automatically rescind the operating permit of any previously permitted dispensary that fails to commence operations prior to December 31, 2019.

Based on the above direction, a related draft ordinance has been included in the agenda packet that would incorporate the following changes:

- *Amend title of Chapter 4-33 to reflect medical and adult use of cannabis dispensaries*
- *Amend Sections in 4-33-100 “Definitions” to reflect that cannabis dispensaries may dispense cannabis for adult use*
- *Amend Chapter 4-38 throughout, “Permitted Cannabis Commercial Activity,” to reflect dispensing of cannabis for adult use as a permitted cannabis commercial activity within the City.*
- *Amend Section 4-33-200(c) to reflect that the three dispensary permits must commence operations no later than December 31, 2019. Failure to do so will result in dispensary’s operating permit being automatically and unconditionally revoked.*

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

The City Council for the City of San Leandro does hereby ordain as follows:

Section 1. That the following redline amendments shall be 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 or other entity that sells, distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away cannabis or cannabis-infused products ~~marijuana~~ in the City. This includes an establishment that delivers cannabis and cannabis products as part of a retail sale. 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)(d)~~

~~(f)(e)~~ "City" means the City of San Leandro, and any legislative body granted

regulatory authority over Dispensary operations by this ordinance.

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

~~(h)~~(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 under State law.~~

~~(h)~~ (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)~~ (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. Any references to “medical marijuana” shall also be applicable to cannabis for use by adults, regardless of whether the cannabis is to be or is not used for medicinal purposes.

~~(j)~~ (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)~~ (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 by the State. ~~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:~~

~~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.~~

~~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.~~

~~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.~~

~~(m)~~(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 *et seq.*

~~(n)~~(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.

~~(o)~~(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, as well as~~ the usage, distribution, cultivation or processing of ~~medical~~ marijuana by qualified patients or primary caregivers for medical purposes, including 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 City ordinances, including but not limited to the Zoning Code, the Building Code, and the Municipal Code 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. A dispensary that has been issued a valid City permit prior to January 1, 2019 must be in operation on or before December 31, 2019. Any dispensary in possession of a valid permit that is not in operation on January 1, 2020 shall be automatically and unconditionally revoked without prejudice or recourse.

(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, or adults 21 years of age or older; and

(ii) Controls to acquire, possess, transport and distribute marijuana to and from customers~~members~~, and plans to ensure marijuana is acquired in compliance with relevant laws and regulations~~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~~ Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), 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 Marshal 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 m~~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 caregivers, or adults who are 21 years of age or older members.~~ It is within the City's discretion to limit the number of members allowed per Dispensary.

(4) Only qualified patients, caregivers, adult members who are 21 years of age or older, 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 or cannabis for adult use 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 modified 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 or 21 years of age or older adult customers 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, ~~or~~ customers 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, unless explicitly authorized by the City. 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~~ Restaurants, cafes or lounges shall not be operated on the same premises as the dispensary unless explicitly authorized by the City of San Leandro. .-

(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 ~~Medicinal and Adult-Use at 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 by the State 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, or other state-issued identification 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, or by other means or methods approved by the City, keep an accurate account of the number of ~~members or customers who that visit~~ customers to 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 customers~~ the Dispensary or customers and the number of Dispensary visits by ~~each member~~ s or customers during the previous calendar quarter.

(3) Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City, upon request, 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 or the City's designated agent 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 all patient or customer complaints and shall make the log available to the City upon request. The log shall contain at a minimum the date of the complaint, in the case of a medical marijuana patient customer 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 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 ~~two~~^{three} security guards duly licensed by the State of California, Department of Consumer Affairs, subject to modification as may be authorized by the San Leandro Police Department. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms or tasers.

(3) 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.

(4) 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~~ marijuana to the ~~reported member or customer~~, and make a report within twenty-four (24) hours to the ~~Chief of Police~~Police Department, ~~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~~ sold or provided marijuana ~~to non-members~~. The Dispensary shall inform patients, ~~and~~ primary caregivers and customers about this provision and remind them that it is unlawful for them to sell ~~medical cannabis~~ to non-members in violation of State law.

(5) If required by building code or for security as determined by the Police Department, ~~W~~indows and roof hatches at the property shall be secured so as to prevent unauthorized entry ~~or 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.

(6) 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, OR SHALL CONFIRM THAT YOU ARE AN ADULT 21 YEARS OF AGE OR OLDER. 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 OUTSIDE OF PERMITTED 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 ~~of California Board of Equalization~~ has determined that ~~medical~~ marijuana transactions are subject to sales tax, ~~subject to certain specific exemptions, regardless of whether the individual or group makes a profit,~~ and those engaging in transactions involving ~~medical~~ marijuana must obtain ~~a Seller’s Permit(s)~~ from the State ~~Board of Equalization~~. Such permit(s) shall be conspicuously displayed at the Dispensary. Failure to maintain ~~any required State permits 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~~Medicinal and Adult-Use Cannabis~~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.

[Section 2. That the following shall replace Title 4, Chapter 38 in its entirety:](#)

4-38-100 INTENT AND PURPOSES.

The intent and purpose of this Chapter is to regulate commercial cannabis activity (as defined below) in accordance with State law to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA. The goals of this regulation are to ensure the City’s regulatory framework is not preempted by State law in the areas of cannabis distribution, dispensing, manufacture, testing and cultivation of cannabis for adult use. It is City policy to permit the dispensing and retailing of cannabis in accordance with City of San Leandro Municipal Code Chapters 4-33 and 4038, to permit the manufacture of cannabis products at City permitted dispensaries, to permit the manufacture and laboratory testing of cannabis products for medicinal and adult use, and to prohibit cultivation of cannabis, except for personal use that comports with State law. Any references to “medicinal cannabis” or medical cannabis shall also be applicable to adult-use cannabis. The City’s permitted medical cannabis dispensaries shall be allowed to conduct retail sales for adult use to any customer who is verified as being 21 years of age or older.

4-38-200 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

(a) **“A-License”** means a State License issued under Division 10, commencing with Section 26000 of the [Business and Professions Code](#), for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician’s recommendations or an interim license issued by the State for the same.

(b) **“A-Licensee”** means any Person holding a State License under Division 10, commencing with Section 26000, of the [Business and Professions Code](#) for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician’s recommendations or an interim license issued by the State for the same.

(c) **“Adult Use Cannabis”** means the non-medical use of cannabis by adults of age twenty-one (21) and over as permitted by MAUCRSA and other applicable State and City laws.

(d) **“Cannabis”** shall have the same meaning as in Section 26000 of the [Business and Professions Code](#).

(e) **“Cannabis Dispensary”** or **“Dispensary”** shall be as defined in City of San Leandro Municipal Code Section 4-33-100(d)

(f) **“Cannabis Product”** shall have the same meaning as in Section 11018.1 of the [Health and Safety Code](#).

(g) **“City”** shall be the City of San Leandro.

(h) **“City Council”** means the current members of the City Council of the City.

(i) **“City Manager”** means the individual duly appointed by a majority of the City Council to serve in the capacity as executive officer of the City on a permanent or interim basis or such other official as designated by the City to fulfill such duties.

(j) **“Commercial Cannabis Activity”** includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of Cannabis and Cannabis Products as provided for in this Chapter and Division 10, commencing with Section 26000, of the [Business and Professions Code](#).

(k) **“Cultivation”** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

(l) **“Deliver”** or **“Delivery”** means the commercial transfer or delivery of cannabis or cannabis products to a customer.

(m) **“Distribution”** means the procurement, sale, and transport of cannabis and cannabis products between State licensees.

(n) **“Indoor Cultivation”** means a cultivation using exclusively artificial lighting.

(o) **“Manufacture”** means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product from such blends, extractions, or infusions.

(p) **“Medicinal Cannabis”** or **“Medicinal Cannabis Product”** means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the [Health and Safety Code](#), by a medicinal cannabis patient in California who possesses a physician’s recommendation.

(q) **“Mixed Light Cultivation”** means a cultivation facility using a combination of natural and supplemental artificial lighting.

(r) **“Outdoor Cultivation”** means any cultivation conducted without the use of artificial lighting.

(s) **“Person”** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(t) **“State License”** means a State license issued under Division 10, commencing with Section 26000, of the [Business and Professions Code](#), and includes both an A-license and M-license as well as a testing laboratory license.

(u) **“State Licensee”** means a person that has been issued a State license.

(v) **“Testing”** means the laboratory testing of the quality, makeup, or purity of cannabis and cannabis products as required by applicable State law.

4-38-300 ADULT-USE CANNABIS ACTIVITY PROHIBITED.

All commercial cannabis activity, including any that would be allowed under an A-license or to an A-licensee or for adult use, and all cultivation, including any indoor cultivation, mixed light cultivation and outdoor cultivation, other than cultivation for personal use in accordance with State law, is prohibited within the City, except as permitted by this Chapter.

4-38-400 PERMITTED COMMERCIAL CANNABIS ACTIVITY.

The following are permitted commercial cannabis activity within the City of San Leandro:

(a) Cannabis distribution and dispensing from a State-licensed cannabis dispensary for medical and adult use by persons 21 years of age or older that also has a City-issued cannabis dispensary operating permit awarded pursuant to City of San Leandro Municipal Code Chapter 4-33, and a City-issued conditional use permit awarded pursuant to City of San Leandro Zoning Code Article 22;

(b) Delivery of cannabis within the City of San Leandro from State-licensed cannabis dispensaries;

(c) The manufacture of cannabis product by a State licensee in accordance with all City of San Leandro ordinances and regulations, including, but not limited to, the City of San Leandro Zoning Code and the City of San Leandro Administrative Code;

(d) The testing of cannabis and cannabis product within a laboratory by a State licensee in accordance with all City of San Leandro ordinances and regulations, including, but not limited to, the City of San Leandro Zoning Code and the City of San Leandro Administrative Code.

4-38-405 STATE LICENSES.

Subject to the requirements of this Chapter, and in accordance with the MAUCRSA and Division 10, commencing with Section 26000 of the [Business and Professions Code](#), the following State license classification types, including temporary licenses, will be allowed within the City:

(a) Type 6—A or M - Manufacturer 1. (A - Adult Use; M - Medicinal) (Type 1 denotes manufacturers that do not use solvents in the manufacturing process).

(b) Type 7—A or M - Manufacturer 2. (A - Adult Use; M - Medicinal) (Type 2 denotes manufacturers that do use solvents in the manufacturing process).

(c) Type 8—~~A or M~~—Testing Laboratory. (~~A—Adult Use; M—Medicinal~~).

(d) Type 10—A or M - Retailer. (A – Adult Use; M - Medicinal).

(e) Type 11—A or M - Distributor. (A – Adult Use; M - Medicinal).

(f) Cannabis dispensaries may also operate with a Type 6 M - Manufacturer 1 State license. Cannabis dispensaries shall not operate with a Type 7 M - Manufacturer 2 State license.

(g) Cannabis dispensaries shall not operate with a Type 8 - Testing Laboratory, ~~A or M~~ State license.

(h) Cannabis dispensaries may operate with a Type 10 A or M - Retailer (non-storefront) State license.

(i) Unless determined by the City Manager that cross-permitting would negatively impact public safety, and unless otherwise provided herein, State license Types 6, 7, and 8 are for both commercial adult-use cannabis activity and commercial medicinal cannabis activity.

4-38-500 ENFORCEMENT.

(a) Any commercial cannabis activity within the City in violation of this Chapter is hereby declared to be unlawful and a public nuisance.

(b) Any person who willfully or knowingly: (1) engages in a violation of this Chapter; or (2) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this Chapter is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this Chapter.

(c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists.

(d) Any person in violation of any provision of this Chapter or who causes another person to be in violation of this Chapter shall have committed a misdemeanor. In addition, such violation

may be punishable by a fine of up to One Thousand Dollars (\$1,000.00) for each violation and for each day the applicable violation continues to persist.

(e) Any person in violation of any provision of this Chapter may be subject to an administrative fine of up to One Thousand Dollars (\$1,000.00) per offense.

(f) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

(g) Any person in violation of any provision of this Chapter shall be reported to the State Bureau of Cannabis Control, or other applicable licensing authority as defined in Section 26000 of the [Business and Professions Code](#).

Section 3. SEVERABILITY CLAUSE. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.



City of San Leandro

Meeting Date: March 18, 2019

Ordinance

File Number: 19-153

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending Title 4, Chapter 4-33 and 4-38 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 has over time chosen to amend the ordinance as necessary to comply with changes to State law, including changes stemming from the passage of Proposition 64 (The Adult Use of Marijuana Act) and the Medicinal and Adult-use Cannabis Regulation & Safety Act; and

WHEREAS, the City Council, with the assistance and analysis of staff, has evolved its position on the dispensing of cannabis within the City, and now desires to allow its previously permitted medicinal cannabis dispensaries to conduct adult use sales of cannabis to customers who are at least 21 years of age or older, regardless of whether or not they possess proof of a physician's recommendation; and

WHEREAS, the City Council also desires to establish a time limitation that automatically rescinds the operating permit of any previously permitted dispensary that fails to commence operations and begin serving customers prior to December 31, 2019.

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 and 4-38 of the San Leandro Municipal Code is hereby amended as shown in attached Ordinance, so as to achieve the above-referenced desired outcomes.

CHAPTER 4-33

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 business or other entity that sells, distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away cannabis or cannabis-infused products in the City. This includes an establishment that delivers cannabis and cannabis products as part of a retail sale.
- (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 under State law.

- (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. Any references to "medical marijuana" shall also be applicable to cannabis for use by adults, regardless of whether the cannabis is or is not for medicinal purposes.
- (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 by the State.
- (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 *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.
- (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) The individual possession or cultivation of cannabis for personal use, as well as the usage, distribution, cultivation or processing of cannabis by qualified patients or primary caregivers for medical purposes, including when such group is of three (3) or less individuals, and distributing, cultivating or processing the cannabis from a residential unit or a single non-residential parcel of land must comply with all applicable State Laws and City ordinances, including but not limited to the Zoning Code, the Building Code, and the Municipal Code.
- (c) The City shall issue no more than three (3) valid permits for the operation of dispensaries in the City. A dispensary that has been issued a valid City permit prior to January 1, 2019 must be in operation on or before December 31, 2019. Any dispensary in possession of a valid permit that is not in operation on January 1, 2020 shall be automatically and unconditionally revoked without prejudice or recourse.
- (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 cannabis will be dispensed only to qualified patients, primary caregivers, or adults 21 years of age or older; and
 - (ii) Controls to acquire, possess, transport and distribute cannabis to and from customers, and plans to ensure cannabis is acquired in compliance with relevant laws and regulations.
 - (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 Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), 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 Marshal 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 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) Cannabis 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 cannabis to qualified patients, primary caregivers, or adults who are 21 years of age or older. It is within the City's discretion to limit the number of members allowed per Dispensary.
- (4) Only qualified patients, caregivers, adult members who are 21 years of age or older, 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 or cannabis for adult use that violate California law or this ordinance are expressly prohibited.
- (6) A Dispensary may only dispense, store, or transport cannabis in aggregate amounts tied to its membership. A Dispensary may possess no more than eight (8) ounces of dried cannabis per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature cannabis 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 cannabis 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 modified by the City.
- (8) Dispensaries shall disclose the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabinol in cannabis or products containing cannabis to qualified patients or 21 years of age or older adult customers before providing cannabis.
- (9) Dispensaries shall follow the requirements of State law and/or the directions

of the City Manager or his/her designee regarding any cannabis found to be non-compliant with testing standards. These instructions extend to any 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 cannabis distributed by a collective or cooperative shall be analyzed by 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 cannabis 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 cannabis provided to members, patients, or customers 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, unless explicitly authorized by the City. 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. Restaurants, cafes or lounges shall not be operated on the same premises as the dispensary unless explicitly authorized by the City of San Leandro.
- (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 Medicinal and Adult-Use 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 by the State 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 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 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) 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 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, or other government-issued identification 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. 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 or customers who are caught diverting cannabis out of the licensed process. All membership records shall be maintained on site.

- (1) A Dispensary shall, by using the patient or caregiver's identification number, or by other means or methods approved by the City, keep an accurate account of the number of customers to 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 customers the Dispensary or customers and the number of Dispensary visits by members or customers during the previous calendar quarter.
- (3) Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City, upon request, a listing of the cannabis 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 or the City's designated agent 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 all customer complaints and shall make the log available to the City upon request. The log shall contain at a

minimum the date of the complaint, in the case of a member or customer the complainant'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 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 two security guards duly licensed by the State of California, Department of Consumer Affairs, subject to modification as may be authorized by the San Leandro Police Department. 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 cannabis by members. Security guards shall be directed to report to the Dispensary all unlawful sales of cannabis by members. The Dispensary shall immediately cease providing cannabis to the customer, and make a report within twenty-four hours to the Police Department. The Dispensary shall keep a record of all incidents where members unlawfully sold or provided marijuana. The Dispensary shall inform patients, and primary caregivers and customers about this provision and remind them that it is unlawful for them to sell cannabis in violation of State law.
- (6) If required by building code or for security as determined by the Police Department, windows and roof hatches at the property shall be secured so as to prevent unauthorized entry or 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"

NOTICE

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

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 CANNABIS, OR SHALL CONFIRM THAT YOU ARE AN ADULT 21 YEARS OF AGE OR OLDER. 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 CANNABIS OUTSIDE OF PERMITTED 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 CANNABIS DISPENSARY FOR AN ILLEGAL PURPOSE IS PROHIBITED BY CALIFORNIA PENAL CODE SECTION 647(h).

Sign 6: Font size at least 1 inch

THIS 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 of California has determined that marijuana transactions are subject to sales tax, subject to certain specific exemptions, and those engaging in transactions involving cannabis must obtain permit(s) from the State. Such permit(s) shall be conspicuously displayed at the Dispensary.

Failure to maintain any required State permits 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 Medicinal and Adult-Use Cannabis 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 cannabis 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.

Section 2. That the following shall replace Title 4, Chapter 38 in its entirety:

4-38-100 INTENT AND PURPOSES.

The intent and purpose of this Chapter is to regulate commercial cannabis activity (as defined below) in accordance with State law to promote the health, safety, morals, and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the MAUCRSA. The goals of this regulation are to ensure the City's regulatory framework is not preempted by State law in the areas of cannabis distribution, dispensing, manufacture, testing and cultivation of cannabis for adult use. It is City policy to permit the dispensing and retailing of cannabis in accordance with City of San Leandro Municipal Code Chapters 4-33 and 4038, to permit the manufacture of cannabis products at City permitted dispensaries, to permit the manufacture and laboratory testing of cannabis products for medicinal and adult use, and to prohibit cultivation of cannabis, except for personal use that comports with State law. Any references to "medicinal cannabis" or medical cannabis shall also be applicable to adult-use cannabis. The City's permitted medical cannabis dispensaries shall be allowed to conduct retail sales for adult use to any customer who is verified as being 21 years of age or older.

4-38-200 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

(a) "**A-License**" means a State License issued under Division 10, commencing with Section 26000 of the Business and Professions Code, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.

(b) "**A-Licensee**" means any Person holding a State License under Division 10, commencing with Section 26000, of the Business and Professions Code for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations or an interim license issued by the State for the same.

(c) "**Adult Use Cannabis**" means the non-medical use of cannabis by adults of age twenty-one (21) and over as permitted by MAUCRSA and other applicable State and City laws.

(d) "**Cannabis**" shall have the same meaning as in Section 26000 of the Business and Professions Code.

(e) "**Cannabis Dispensary**" or "**Dispensary**" shall be as defined in City of San Leandro Municipal Code Section 4-33-100(d)

(f) "**Cannabis Product**" shall have the same meaning as in Section 11018.1 of

the Health and Safety Code.

(g) “**City**” shall be the City of San Leandro.

(h) “**City Council**” means the current members of the City Council of the City.

(i) “**City Manager**” means the individual duly appointed by a majority of the City Council to serve in the capacity as executive officer of the City on a permanent or interim basis or such other official as designated by the City to fulfill such duties.

(j) “**Commercial Cannabis Activity**” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of Cannabis and Cannabis Products as provided for in this Chapter and Division 10, commencing with Section 26000, of the Business and Professions Code.

(k) “**Cultivation**” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

(l) “**Deliver**” or “**Delivery**” means the commercial transfer or delivery of cannabis or cannabis products to a customer.

(m) “**Distribution**” means the procurement, sale, and transport of cannabis and cannabis products between State licensees.

(n) “**Indoor Cultivation**” means a cultivation using exclusively artificial lighting.

(o) “**Manufacture**” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product from such blends, extractions, or infusions.

(p) “**Medicinal Cannabis**” or “**Medicinal Cannabis Product**” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

(q) “**Mixed Light Cultivation**” means a cultivation facility using a combination of natural and supplemental artificial lighting.

(r) “**Outdoor Cultivation**” means any cultivation conducted without the use of artificial lighting.

(s) “**Person**” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

(t) “**State License**” means a State license issued under Division 10, commencing with Section 26000, of the Business and Professions Code, and includes both an A-license and M-license as well as a testing laboratory license.

(u) “**State Licensee**” means a person that has been issued a State license.

(v) “**Testing**” means the laboratory testing of the quality, makeup, or purity of cannabis and cannabis products as required by applicable State law.

4-38-300 ADULT-USE CANNABIS ACTIVITY PROHIBITED.

All commercial cannabis activity, including any that would be allowed under an A-license or to an A-licensee or for adult use, and all cultivation, including any indoor cultivation, mixed light cultivation and outdoor cultivation, other than cultivation for personal use in accordance with State law, is prohibited within the City, except as permitted by this Chapter.

4-38-400 PERMITTED COMMERCIAL CANNABIS ACTIVITY.

The following are permitted commercial cannabis activity within the City of San Leandro:

(a) Cannabis distribution and dispensing from a State-licensed cannabis dispensary for medical and adult use by persons 21 years of age or older that also has a City-issued cannabis dispensary operating permit awarded pursuant to City of San Leandro Municipal Code Chapter 4-33, and a City-issued conditional use permit awarded pursuant to City of San Leandro Zoning Code Article 22;

(b) Delivery of cannabis within the City of San Leandro from State-licensed cannabis dispensaries;

(c) The manufacture of cannabis product by a State licensee in accordance with all City of San Leandro ordinances and regulations, including, but not limited to, the City of San Leandro Zoning Code and the City of San Leandro Administrative Code;

(d) The testing of cannabis and cannabis product within a laboratory by a State licensee in accordance with all City of San Leandro ordinances and regulations, including, but not limited to, the City of San Leandro Zoning Code and the City of San Leandro Administrative Code.

4-38-405 STATE LICENSES.

Subject to the requirements of this Chapter, and in accordance with the MAUCRSA and Division 10, commencing with Section 26000 of the Business and Professions Code, the following State license classification types, including temporary licenses, will be allowed within the City:

(a) Type 6—A or M - Manufacturer 1. (A - Adult Use; M - Medicinal) (Type 1 denotes manufacturers that do not use solvents in the manufacturing process).

(b) Type 7—A or M - Manufacturer 2. (A - Adult Use; M - Medicinal) (Type 2 denotes manufacturers that do use solvents in the manufacturing process).

(c) Type 8—Testing Laboratory. .

(d) Type 10—A or M - Retailer. (A – Adult Use; M - Medicinal).

(e) Type 11—A or M - Distributor. (A – Adult Use; M - Medicinal).

(f) Cannabis dispensaries may also operate with a Type 6 M - Manufacturer 1 State license. Cannabis dispensaries shall not operate with a Type 7 M - Manufacturer 2 State license.

(g) Cannabis dispensaries shall not operate with a Type 8 - Testing Laboratory State license.

(h) Cannabis dispensaries may operate with a Type 10 A or M - Retailer (non-storefront) State license.

(i) Unless determined by the City Manager that cross-permitting would negatively impact public safety, and unless otherwise provided herein, State license Types 6, 7, and 8 are for both commercial adult-use cannabis activity and commercial medicinal cannabis activity.

4-38-500 ENFORCEMENT.

(a) Any commercial cannabis activity within the City in violation of this Chapter is hereby declared to be unlawful and a public nuisance.

(b) Any person who willfully or knowingly: (1) engages in a violation of this Chapter;

or (2) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this Chapter is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this Chapter.

(c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists.

(d) Any person in violation of any provision of this Chapter or who causes another person to be in violation of this Chapter shall have committed a misdemeanor. In addition, such violation may be punishable by a fine of up to One Thousand Dollars (\$1,000.00) for each violation and for each day the applicable violation continues to persist.

(e) Any person in violation of any provision of this Chapter may be subject to an administrative fine of up to One Thousand Dollars (\$1,000.00) per offense.

(f) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

(g) Any person in violation of any provision of this Chapter shall be reported to the State Bureau of Cannabis Control, or other applicable licensing authority as defined in Section 26000 of the Business and Professions Code.

Section 3. SEVERABILITY CLAUSE. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.