City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814
www.cityofsacramento.org

File #: 2016-01172 **Consent Item 02**

Title: (Pass for Publication) Ordinance Amending Chapter 5.150 of the Sacramento City Code Relating to Marijuana Cultivation Permits and the Delivery of Medical Marijuana

Recommendation: 1) Review an ordinance amending chapter 5.150 of the Sacramento City Code relating to marijuana cultivation permits and the delivery of medical marijuana, and 2) pass for publication the ordinance title as required by Sacramento City Code section 32(c) to be adopted on October 25, 2016.

Location: Citywide

Contact: Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance; Randi L. Knott, Director of Government Affairs, (916) 808-5771, Office of the City Manager

Presenter: Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance; Randi L. Knott, Director of Government Affairs, (916) 808-5771, Office of the City Manager

Department: Office of the City Manager and Department of Finance

Attachments:
1-Description/Analysis
2-Ordinance-Clean
3-Ordinance – Redline

Description/Analysis

Issue Detail: Since September 2015, the Governor has signed several bills affecting state and local government licensing/permitting of medical marijuana businesses. These laws, collectively referred to as the Medical Cannabis Regulation and Safety Act (MCRSA), are intended to protect local control of the medical marijuana industry and create a framework for additional oversight of industry practices including cultivation, manufacturing, lab testing, delivery, transport and distribution. MCRSA establishes a dual licensing framework for medical cannabis operators, meaning if a local license is available, then the operator must secure both a state license as well as a local license to operate. State licensure is not required however until such time that the state licenses become available which is projected to be in January 2018.

Staff is recommending that the Council approve the proposed ordinance, which does the following things:

1. Allows permitted medical marijuana dispensaries to deliver medical marijuana to their members who are qualified patients.
2. Requires marijuana cultivation businesses to obtain a city business permit and comply with operating regulations.
3. Reorganizes chapter 5.150 of the Sacramento City Code to accommodate all marijuana businesses, including dispensaries and cultivation sites.
4. Makes non-substantive technical changes to chapter 5.150 to update the language to current standards.

The intent of the ordinance is to ensure the public health and safety while avoiding negative impacts on surrounding communities. It is further recommended that staff report back to City Council with an initial 6-month review and an annual review of the marijuana cultivation regulations thereafter. Once the regulations are adopted, staff will return to Council with a proposed marijuana cultivation permit fee to cover the cost of the program including some enforcement activities. It is anticipated that the fee will be on a sliding scale based on cultivation size.

In order to ensure that these proposed policies were vetted by all City departments involved in the regulation of medical marijuana businesses, a staff working group from the City Manager's Office, City Attorney's Office, Department of Finance, Police Department, Fire Department, Community Development and Economic Development has met weekly over the last several months to develop these recommendations. The team is presenting best practices gleaned from extensive research of other cities and states that have regulated medical and/or

recreational marijuana. We have also held numerous stakeholder meetings with representatives from the cannabis industry, business improvement districts, neighborhood associations, and Council Members.

Policy Considerations: Two of the newly permitted activities, cultivation and delivery are addressed in this report. Per current state law, delivery of medical marijuana can only be through a permitted dispensary. The City Code section attached has been updated to remove the City's current prohibition on delivery. Dispensaries choosing to deliver to patients must follow all applicable state and local laws. Dispensaries will be prohibited from delivering products from another facility other than the dispensary, such as a separate storage facility or marijuana product manufacturing facility. Further, dispensaries must maintain a delivery log that includes all the necessary auditable data included in the updated City Code.

The issuance or revocation of a business permit is separate from the issuance of a land use permit and vice versa. All of the recommendations in this report are related to Title 5 business permitting; recommendations for the Title 17 land use regulations for marijuana cultivation are in a separate staff report. In addition to the operating permit and the conditional use permit, a building permit will be required for any improvements or alterations made to the property or structures. Improvements or alterations must comply with Title 24 of the California Code of Regulations.

Many jurisdictions have chosen to implement a cap on the number of cultivation sites they chose to permit. Staff is not recommending a cap on the number of permits at this time as the number of sites will be determined by land use and private sector business decisions; however, the City Council may choose to limit the number of sites for the public health, safety, and welfare.

Staff recommends that the Title 5 Business Operations Permit for Marijuana Cultivations include the following requirements:

1. Security and Exterior Lighting: Applicants shall be required to submit a written security plan, including, at a minimum, security cameras and video recording system monitoring all doors into the buildings on the site; the parking lot; loading areas; and all exterior sides of the site adjacent to the public rights of way. Security camera monitoring would be required 24/7 and recordings shall be kept for a minimum of 30 days. A plan for ensuring security during a power outage shall be included.
2. Interested Parties: Applicants will be required to have background checks for all interested parties (persons with a 10% interest in the business, managers, and staff of a marijuana cultivation business) that will consist of a Live Scan fingerprinting and full

background check. Anyone convicted of a felony, convicted of participating in a criminal street gang, or on probation or parole for a misdemeanor relating to the sale or distribution of a controlled substance may not be an interested party in the marijuana cultivation business.

3. Odor Control Plan: Applicants shall submit an odor control plan providing a description of the air treatment systems or other methods that will be implemented to control or eliminate external odors.
4. Cash Handling Plan: Applicants shall submit a description of proposed cash handling procedures.
5. Transportation Plan: Applicants shall submit a plan describing the procedures for safely and securely transporting marijuana, products and currency.
6. Community Relations Plan: Applicants shall designate a person(s) responsible for community outreach including interactions with neighborhood and businesses.
7. Resource Efficiency Plan: Cultivation facilities can require the consumption of significant amounts of water and energy. Applicants shall submit a plan to achieve both water and energy efficiency and to minimize resource consumption. Applicants shall submit a plan that has been reviewed by the Sacramento Municipal Utility District (SMUD) to ensure they are utilizing the best management practices for energy efficiency and shall submit a water efficiency plan to the City's Department of Utilities (DOU) to ensure efficient water use and safe wastewater practices.
8. Insurance/City Liability: Applicants shall include proof of insurance and a statement indemnifying the City from any claims, damages, injuries or other liabilities associated with the registration and operation of the medical marijuana cultivation business.
9. Site Plan and Floor Plan: Applicants for a cultivation site shall distinguish the dimensions of areas in which plants are proposed to be located in relation to all other working areas.
10. Plan of Operations: A plan describing how the cultivation facility will operate consistent with state and local laws including controls to ensure that marijuana is not diverted for non-medical purposes and ensure that medical marijuana is delivered to and by licensed transporters and distributors.

In addition to the items listed above Staff recommends that a description of any Employee or Community Benefit Plans be required to be submitted with the Business Operations Permit applications. Inclusion of any or all of these plans in the applications, or the lack thereof, will not be considered grounds for a denial of the permit(s). Employee or Community Benefits plans could include:

- Employee Working Environment Plan:
  - Examples are as follows: health insurance, benefits, education, public transit or bicycle subsidy, etc.
- Compassionate Need Plan:
  - Examples are as follows: Donation to dispensaries to offset costs for those who cannot afford medical cannabis, veterans programs, etc.
- Community Benefits Plan:
  - Examples are as follows: local hiring and workforce development; local small business participation in construction of grow facilities; support for local arts, music and culture, local education and youth programs and activities, local business and community groups and development and expansion of broadband wi fi access etc.

The Community Benefits Plan details will vary depending on the needs and interests of the business and the surrounding community. Applicants are strongly encouraged to work with local business and neighborhood associations to ensure an ongoing and positive relationship. While other jurisdictions have prescriptive and mandatory Community Benefits Plans, the Law and Legislation Committee directed that the permits for marijuana cultivation be ministerial and that the Community Benefit Plan be required. Since the Plan would be subjective in nature, the two concepts are somewhat incompatible. As a result, as proposed, the ordinance requires that any Community Benefit Plan be described in the application but will not be enforced by the City.

In addition to the above requirements, staff is recommending that the applicants indicate the maximum cultivation size in their application. Staff is recommending the following maximum levels to be consistent with the State requirements:

Class A, for indoor cultivation of less than or equal to 5,000 square feet
Class B, for indoor cultivation of between 5,001 and 10,000 square feet
Class C, for indoor cultivation of between 10,001 and 22,000 square feet.

The City's current land use moratorium on marijuana cultivation remains in place. Once the regulations are adopted, staff will develop guidelines for processing applications and requirements for continuing cultivation. Staff anticipates that it will return to Council in the new year with a recommendation to remove the moratorium once those processes are in place.

Staff is currently developing the criteria that would be required to allow marijuana cultivation businesses to continue to cultivate while their applications are pending. At this point, we are

considering that those operators who satisfy the requirements to be an established operation under the moratorium; meet the zoning requirements; and, apply for both their CUP and Business Operating Permit (permit) within 90 days may continue to cultivate while their permits are under review.

Interest in cultivating medical marijuana in Sacramento is quite high. Staff has received over 800 inquiries from potential cultivators or their agents. Therefore, staff is considering that the city process the applications in each category of canopy size on a first come first served basis.

Economic Impacts: Not Applicable

Environmental Considerations: This action is not a project subject to the California Environmental Quality Act (CEQA) because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, §§ 15002(d), 15378, 15061(b)(3).)

Sustainability: Applicants for Medical Marijuana Cultivation permits will be required to submit water and energy efficiency plans approved by the City's Department of Utilities and SMUD respectively.

Commission/Committee Action: The Law and Legislation Committee has conducted numerous meetings on the regulation of medical marijuana. In December 2015 the Committee directed the City Manager propose an ordinance regulating land use for medical marijuana cultivation. That framework ordinance was forwarded to the City Council along with a moratorium on cultivation until land use and operating regulations could be detailed. At today's meeting, the updated cultivation ordinance and amendments to Title 17, with comments from the Planning and Design Commission, are on the agenda.
In May and again in August 2016, staff received additional input from the Committee and updated the timeline for draft regulations for cultivation, manufacturing and delivery of medical marijuana. Staff will return to Council with an item recommending the removal of the moratorium after approval of the Title 5 and Title 17 permitting processes.
It is worth noting that at the August 2016 Law & Legislation meeting, the Committee was split on the optional nature of the Community Benefits Plan. Three of the four Committee Members recommended that the Community Benefits Plan be mandatory for submission of a complete application. The Committee then recommended that this discussion be brought before the full City Council.

Rationale for Recommendation: There are several successful models throughout the state and nation regarding the regulation of medical marijuana cultivation and delivery. Staff is

recommending that the Committee approve the proposed Title 5 permitting requirements for medical marijuana cultivation facilities and delivery based upon these best practices. States and cities included in the research include but were not limited to: Nevada, Colorado, Washington, and the California cities of Oakland, Cathedral City, Santa Rosa, Greenfield, and Desert Hot Springs.

Financial Considerations: Medical marijuana Business Operations Tax (BOT) for retail sales in fiscal year 2015/16 was just over $4,400,000. Assuming a 100% mark up (per cannabis industry), staff estimates an additional $2,200,000 in BOT for marijuana cultivation sales.

Local Business Enterprise (LBE): Not applicable

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE DELETING AND ADDING CHAPTER 5.150 OF THE SACRAMENTO CITY CODE, RELATING TO MARIJUANA BUSINESSES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.150 of the Sacramento City Code is deleted.

SECTION 2.

Chapter 5.150 is added to the Sacramento City Code to read as follows:

Chapter 5.150 MARIJUANA BUSINESSES

Article I. General Provisions

5.150.010 Purpose and intent.

In 1996, California voters approved Proposition 215, known as the Compassionate Use Act, which was later codified at California Health and Safety Code section 11362.5. The Compassionate Use Act ensures that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction under state law.

In 2003, the State enacted Senate Bill 420, known as the Medical Marijuana Program, codified at California Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement the provisions, and clarify the intent, of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program. One such regulation, California Health and Safety Code section 11362.775, removed state-level criminal and civil sanctions for the collective or cooperative cultivation of medical marijuana.

In 2015, the State enacted a trio of bills (AB 243, AB 266, and SB 643) now known as the Medical Cannabis Regulation and Safety Act. This Act established a state-wide regulatory and licensing structure for medical marijuana businesses, including cultivation, manufacturing, testing, dispensary, distribution, and transport. Marijuana businesses are required to obtain both state licenses and local permits to lawfully

operate. The Medical Cannabis Regulation and Safety Act created immunities for any licensee acting in accordance with state and local laws. However, state licenses are not expected to be issued prior to January 2018. One year after the state commences with the issuance of licenses, the Medical Marijuana Program's collective or cooperative model for the cultivation of medical marijuana is repealed.

It is the purpose and intent of the city council to regulate medical marijuana businesses consistent with state law and to protect the health, safety, and welfare of the residents of the city. The regulations in this chapter do not interfere with a qualified patient's right to obtain and use marijuana as authorized under state law, nor do they criminalize the possession or cultivation of marijuana by qualified patients or their primary caregivers. Medical marijuana businesses shall comply with all provisions of the Sacramento City Code, state law, and all other applicable local codes and regulations. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use or consumption of marijuana under federal, state, or local law.

5.150.020 Definitions.

As used in this chapter:

"City manager" means the city manager or designee.

"Conditional use permit" means any conditional use permit issued by the city pursuant to the Planning and Development Code related to the operation of a medical marijuana dispensary.

"Cultivate" means to plant, grow, harvest, dry, cure, grade, or trim marijuana.

"Cultivation area" means the area on a cultivation site in which marijuana is cultivated.

"Cultivation site" means the portion of the parcel of real property upon which a marijuana cultivation business is operated.

"Dispensary" shall have the same definition as "medical marijuana dispensary," as set forth in this section.

"Dispensary area" means the dispensary property and the area within 100 feet of the dispensary property.

"Dispensary building" means the portion of a building within which a dispensary is operated.

“Dispensary permit” means a medical marijuana dispensary permit issued pursuant to this chapter.

“Dispensary property” means the parcel of real property or portion of the parcel of real property that is owned or leased by a dispensary and upon which a dispensary is operated.

“Drug paraphernalia” shall have the same definition as set forth in California Health and Safety Code section 11364.5.

“Identification card” shall have the same definition as set forth in California Health and Safety Code section 11362.7.

“Juvenile” means any natural person who is under the age of 18 years.

“Manager” means a person with responsibility for the establishment, registration, supervision, or oversight of the operation of a marijuana business, including but not limited to, a person who performs the functions of a board member, director, officer, owner, operating officer, or manager of the marijuana business.

“Marijuana” has the same meaning as “cannabis” in section 19300.5 of the California Business and Professions Code, which includes marijuana as defined in California Health and Safety Code section 11018.

“Marijuana business” means a business subject to the permit requirements of this chapter.

“Marijuana business permit” means any permit issued to a marijuana business pursuant to the provisions of this chapter.

“Marijuana cultivation business” means a business involving the cultivation of marijuana, including a nursery which produces clones, immature plants, seeds, or other agricultural products specifically for the planting, propagation, and cultivation of marijuana.

“Marijuana product” means an item containing marijuana or a substance derived from marijuana, such as concentrates, edibles, or topicals.

“Medical marijuana” means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7 et seq.).

"Medical marijuana dispensary" means a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and operate on a not-for-profit basis, consistent with California Health and Safety Code section 11362.5; article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7); the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008; and this chapter. A medical marijuana dispensary shall not include the following uses: a clinic licensed pursuant to chapter 1 of division 2 of the California Health and Safety Code; a health care facility licensed pursuant to chapter 2 of division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to chapter 3.01 of division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to chapter 3.2 of division 2 of the California Health and Safety Code; and a residential hospice or a home health agency licensed pursuant to chapter 8 of division 2 of the California Health and Safety Code, as long as any such use complies with applicable laws including, but not limited to, California Health and Safety Code section 11362.5, article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7), and the Sacramento City Code.

"Member" means any qualified patient, primary caregiver, or person with an identification card who is registered with a marijuana business.

"Operate a dispensary" means to engage in or conduct the not-for-profit business of a dispensary, including, but not limited to, distributing medical marijuana and maintaining the facilities of a dispensary.

"Person with an identification card" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Physician" means a licensed medical doctor as defined in California Business and Professions Code section 4039.

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Private medical records" means records related to the medical history of a qualified patient and includes the recommendation of a physician for the medical use of medical marijuana and the designation of a primary caregiver by a qualified patient.

"Qualified patient" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Reasonable compensation" means compensation commensurate with wages and benefits paid to officers and employees of other not-for-profit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked.

"Staff" means a person other than a manager who works or provides services on the site of a marijuana business, whether as an employee, contractor, or volunteer.

5.150.030 All state and local licenses required.

A. No marijuana business shall operate unless it is in possession of all applicable state and local licenses or permits.

B. Every marijuana business shall submit to the city manager a copy of any and all of its state and local licenses and permits required for its operation.

C. If any other applicable state or local license or permit required for a marijuana business's operation is denied, suspended, modified, revoked, or expired, the marijuana business shall notify the city manager in writing within 10 days.

5.150.040 Payment of taxes.

In addition to any fees established and imposed pursuant to this chapter, all marijuana businesses are required to pay all applicable taxes, including the business operations tax pursuant to title 3 and sales tax pursuant to state law.

5.150.050 Marijuana transfer between permitted businesses only.

A marijuana business shall not transfer marijuana or marijuana products to or from another marijuana business, unless both businesses are in possession of all required state and local licenses and permits.

5.150.060 Permits not transferable.

Marijuana business permits issued pursuant to this chapter are not property and have no value. Marijuana business permits may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a marijuana business permit shall be unlawful and void, and shall automatically revoke the permit.

5.150.070 Service of notices.

All notices required by this chapter shall be deemed issued and served upon the date they are either deposited in the United States mail, postage pre-paid, addressed to the applicant or marijuana business at the mailing address identified in its application,

the last updated address on file with the city manager's office, or the mailing address on the appeal form; or the date upon which personal service of the notice is provided to the applicant or a manager identified on the application or appeal form.

5.150.080 Inspection authority.

A. City officials may enter and inspect the site of a marijuana business at any reasonable time to ensure compliance and enforcement of the provisions of this chapter.

B. City officials may inspect and demand copies of records maintained by the marijuana business, except for private medical records, which shall be made available to law enforcement agencies only pursuant to a properly executed search warrant, subpoena, or court order.

C. No person shall refuse, impede, obstruct, or interfere with an inspection pursuant to this chapter.

5.150.090 Violations.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

B. Violations of this chapter are hereby declared to be public nuisances.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than $250 or more than $25,000 for each day the violation continues.

D. All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof.

5.150.100 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

Article II. Notice and Appeal Process for Marijuana Business Permits

5.150.110 Denial of marijuana business permit application.

A. If the city manager denies a marijuana business permit after the application is accepted as complete, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the applicant may request reconsideration of the denial, in writing to the city manager, within 10 days of the date of service of the notice.

3. A statement that the failure to timely request reconsideration of the denial will constitute a waiver of all rights to reconsideration, and the denial will be final.

B. If the applicant properly files a request for reconsideration the city manager shall set the date of a hearing within 30 days from the date the request is filed. The hearing shall be conducted by the city manager.

C. Failure to properly file a written request for reconsideration of the notice of denial within 10 days of the date of service of the notice constitutes a waiver of all rights to a hearing, and the city manager's decision will be final. Failure to properly and timely file a request for reconsideration of the notice of denial also constitutes a failure to exhaust administrative remedies and is a bar to any judicial action pertaining to the city manager's decision.

D. If the applicant files a proper request for reconsideration and then fails to appear at the hearing, the request for reconsideration is abandoned, and the decision of the city manager is final and may not be further appealed. Failure to appear at the hearing constitutes a waiver of all rights to a hearing and also constitutes a failure to exhaust administrative remedies and is a bar to any judicial action pertaining to the city manager's decision.

E. Written notice of the decision of the city manager shall be served on the applicant within 10 days following the hearing.

F. The decision of the city manager under this section is subject to appeal in accordance with section 5.150.140.

5.150.120 Suspension, modification, and revocation.

A. In addition to any other remedy authorized by law, the city manager may suspend, modify, or revoke a marijuana business permit.

B. If the city manager proposes to suspend, modify, or revoke a permit, written notice of the proposed suspension, modification, or revocation shall be served on the marijuana business at least 15 days prior to the date of the proposed suspension, modification, or revocation. The notice shall contain:

1. A brief statement of the grounds for the suspension, modification, or revocation.

2. A statement that the dispensary may appeal the action in accordance with section 5.150.140.

3. A statement that the failure to appeal the notice of suspension, modification, or revocation will constitute a waiver of all rights to an appeal hearing, and the suspension, modification, or revocation will be final.

C. Notwithstanding subsection B of this section, the city manager may immediately revoke the marijuana business permit without prior notice under the following circumstances:

1. A medical marijuana dispensary is in violation of section 5.150.290.A (criminal history);

2. A marijuana cultivation business is in violation of section 5.150.410.D (criminal history); or

3. Any marijuana business holding a valid marijuana business permit issued pursuant to this chapter ceases operation for 90 consecutive days or longer.

5.150.130 Marijuana business permit appeal fee.

A. The marijuana business permit appeal fee is established and imposed pursuant to the provisions of this article.

B. The city council shall establish by resolution the amount of the appeal fee and any related penalties.

5.150.140 Denial, suspension, revocation, and nonrenewal—Appeals.

A. Except as otherwise provided in this chapter, any applicant or marijuana business aggrieved by the decision of the city manager in conditioning, denying,

suspending, revoking, modifying, or not renewing a marijuana business permit may appeal the decision by filing a written appeal, accompanied by a nonrefundable appeal fee, with the city manager's office within 10 days from the date of service of the notice from the city manager. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside; and

3. The verification (by declaration under penalty of perjury) of the applicant or marijuana business as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

1. If the appeal is received by the city manager no later than 15 days prior to the next regular appeal hearing, it shall be calendared for that hearing.

2. If the appeal is received by the city manager on a date less than 15 days prior to the next appeal hearing, it shall be calendared for the next regular appeal hearing.

D. Written notice of the time and place of the hearing shall be provided at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of the notice to be delivered to the appellant personally or by mailing a copy addressed to the appellant at the address shown on the appeal.

E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and the city manager's decision shall be final.

F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

G. Any condition, denial, suspension, revocation, or nonrenewal of a marijuana business permit shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

5.150.150 Appeal hearings.

A. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

D. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

5.150.160 Conduct of hearing.

A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b), and (c) shall apply to hearings under this chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing.

2. To introduce documentary and physical evidence.

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.

4. To impeach any witness regardless of which party first called the witness to testify.

5. To rebut the evidence presented against the party.

6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city.

5.150.170 Form and contents of decision.

A. If it is shown, by a preponderance of the evidence, that one or more grounds exist to condition, deny, suspend, revoke, modify, or not renew a marijuana business permit, the hearing examiner shall affirm the city manager's decision. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision is final when signed by the hearing examiner and served as provided in this section.

Article III. Medical Marijuana Dispensaries

5.150.180 Medical marijuana dispensary permit required to operate.

A. No person shall operate a medical marijuana dispensary unless the dispensary has a valid medical marijuana dispensary permit issued pursuant to this chapter.

B. Neither the obtaining of a dispensary permit nor compliance with the operating standards provided in this chapter shall excuse any violation of this code or state law.

5.150.190 Fees.

A. The following fees are established and imposed pursuant to the provisions of this article:

1. Dispensary permit application fee;

2. Dispensary permit program fee; and

3. Dispensary relocation fee.

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

5.150.200 Registered medical marijuana dispensaries.

A. For purposes of this section a "registered medical marijuana dispensary" means a dispensary: (1) that was properly registered with the city manager pursuant to Ordinance No. 2009-033; and (2) that is organized and operates as a cooperative or collective within the meaning of this chapter; and (3) the owner and operator of which has not been cited or convicted of maintaining a public nuisance or of a public safety violation of state or local law relating to the operation of a medical marijuana dispensary by the city or any governmental law enforcement agency.

B. An application for a dispensary permit may only be filed by a registered medical marijuana dispensary.

C. The applicant for the dispensary permit must be the same owner(s) or principal(s) named on the medical marijuana dispensary's registration as of July 27, 2010, and must be a manager of the registered medical marijuana dispensary.

D. Notwithstanding the provisions of section 5.150.180, a person may continue to operate a registered medical marijuana dispensary without a dispensary permit until February 7, 2011. If a phase one or phase two application for a dispensary permit is or has been properly filed and has not been denied, a person may continue to operate that dispensary without a dispensary permit until May 31, 2015, and while the application approval or denial is pending.

E. The authorization to continue to operate a dispensary pursuant to subsection D of this section shall not entitle the applicant to an approval of their dispensary permit application, a determination that the dispensary is a legally established use under the provisions of this code, or legal nonconforming status.

5.150.210 Phase one applications for medical marijuana dispensary permit.

A. Phase one applications for dispensary permits shall be filed with the city manager's office no later than February 7, 2011. Applications shall be on forms provided by the city and shall be accompanied by a nonrefundable dispensary permit application fee, in the amount established by resolution of the city council. Applications received after February 7, 2011, shall be rejected.

B. The phase one application shall be signed by one or more managers under penalty of perjury and shall set forth in writing:

1. Identity of the Dispensary. A description of the statutory entity or business form that will serve as the legal structure for the collective or cooperative and a copy of its formation and organizing documents, including but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement. If a corporation, limited liability company, or a general or limited partnership is a stockholder owning more than 10% of the stock or membership interest of an applicant's dispensary, or is one or more of the partners in an applicant's dispensary, the applicant shall set forth the names and addresses of each of the partners, officers, directors, and stockholders of the corporation, limited liability company, or general or limited partnership.

2. Management Information.

a. The name, address, telephone number, title, and function(s) of each manager of the dispensary.

b. For each manager, a legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

3. Applicant's Phone Number and Mailing Address. The phone number and address to which notice of action on the application and future correspondence is to be mailed.

4. Previous Addresses. Previous addresses of the applicant for the past five years immediately prior to the present address.

5. Verification of Age. Evidence that the applicant and all managers of the dispensary are at least 18 years of age.

6. Criminal Background.

a. A list of each misdemeanor and/or felony conviction, if any, of the applicant and the manager(s), whether the conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant or manager was convicted.

b. The applicant and each manager shall consent to fingerprinting and a criminal background investigation.

7. Employee Information. Number of employees, volunteers, and other persons who will work or provide services at the dispensary.

8. Plan of Operations. A plan describing how the dispensary will operate consistent with state law and the provisions of this chapter, including controls to:

a. Ensure that medical marijuana is not purchased or sold by the dispensary in a manner that would generate a profit.

b. Ensure that medical marijuana will be distributed to members only.

c. Ensure that access to the dispensary property is adequately monitored and restricted to members.

9. Dispensary Description. A description of the proposed location, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

10. Response to the Planning and Development Code. An explanation of how the dispensary complies or expects to comply with the Planning and Development Code, including, but not limited to, the location requirements.

11. Compliance with Applicable Taxes. The applicant shall provide a current copy of its business operations tax certificate and state sales tax seller's permit.

12. City Authorization. Authorization and consent for the city manager to seek verification of the information contained within the application.

13. Statement of Owner's Consent. Consent to operate a dispensary at the proposed location, specifying the street address and parcel number, from the owner or landlord, of the proposed location.

5.150.220 Review of phase one application.

A. Upon receiving a phase one application for a dispensary permit, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension of up to ten days to complete the phase one application.

B. If the city manager determines that the phase one application is complete and, on the face of the application, there appears to be no basis for denial of the permit under section 5.150.250, the city manager shall notify the applicant that it may continue to phase two in the application process pursuant to section 5.150.230.

C. If the application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase one application, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

D. In the event of denial, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful.

5.150.230 Review of phase two application.

A. If the city manager notifies the applicant that it may continue to phase two in the application process the applicant shall, no later than March 31, 2014, file a phase two application with the city manager's office, that includes the following:

1. A nonrefundable dispensary permit program fee in the amount established by resolution of the city council. The dispensary permit program fee shall be in addition to any other fee imposed by this code.

2. Security Plan. A detailed security plan, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

3. Floor Plan. A scaled floor plan for each level of the entire building showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be professionally prepared by a licensed civil engineer or architect.

4. Site Plan. A scaled site plan of the parcel of real property on which the dispensary building is located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be professionally prepared by a licensed civil engineer or architect.

5. Accessibility Evaluation. A written evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect.

6. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1,000 feet of the dispensary property, and the uses of those properties, specifically including, but not limited to, any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

7. Lighting Plan. A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

8. Planning and Development Code Compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

9. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

10. A copy of the dispensary's annual budget for operations.

11. A copy of the dispensary's most recent year's financial statement and tax return.

12. A list of the most recent prices for all products and services provided by the dispensary.

13. Applicant's Certification. A statement dated and signed by each manager, under penalty of perjury, that the manager has personal knowledge of the information contained in the phase one and phase two applications, that the information contained therein is true and correct, and that the applications have been completed under their supervision.

14. Other Information. Such other information as deemed necessary by the city manager to demonstrate compliance with this code.

B. Complete Application.

1. Upon receiving a phase two application, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension up to 10 days to complete the phase two application.

2. An application is not to be considered incomplete for purposes of this subsection B if the sole document remaining to be filed is a copy of the conditional use permit referenced in subsection A.8 of this section.

3. If the phase two application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase two application for being incomplete, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

4. In the event of denial, for any reason, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful.

5. If the city manager determines that the application is complete, the completion date of a phase two application shall be the date when the city manager notifies the applicant that it has received all of the information or materials required, including compliance with subsection A.8 of this section; has determined that the content in the submitted documents is responsive to the requirements; and has deemed the application complete.

5.150.240 Relocation of a dispensary.

A. A dispensary permittee may modify the location for which its dispensary permit is granted by filing a relocation application with the city manager's office.

B. An application for relocation must include the following:

1. Dispensary relocation fee. A nonrefundable dispensary relocation fee, in the amount established by city council resolution. The dispensary relocation fee is in addition to any other fee imposed by this code.

2. Applicant information. The name, address, and telephone number of the dispensary applying for relocation, to which notice of action on the application is to be mailed.

3. Proposed location. A description of the location proposed for the relocation of the dispensary, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

4. Reasons for relocation. A statement of the reasons for the proposed relocation.

5. Security plan. A detailed security plan for the proposed location, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

6. Floor plan. A scaled floor plan for each level of the building in which the dispensary is proposed to be located, showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be prepared by a licensed civil engineer or architect.

7. Site plan. A scaled site plan of the parcel of real property on which the dispensary building is proposed to be located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be prepared by a licensed civil engineer or architect.

8. Accessibility evaluation. A written evaluation of accessibility by the physically disabled to and within the proposed dispensary building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be prepared by a licensed civil engineer or architect.

9. Neighborhood context map. An accurate straight-line drawing depicting the boundaries of the proposed dispensary property, the boundaries of all other properties within 1,000 feet of the proposed dispensary property, and the uses of those properties, specifically including any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

10. Lighting plan. A plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

11. Planning and development code compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

12. Consent to operate. Consent to operate a dispensary at the proposed location, specifying the street address and parcel number, from the owner or landlord of the proposed location.

13. Applicant's certification. A statement dated and signed by each manager, under penalty of perjury, that the manager has personal knowledge of the information contained in the relocation application, that the information contained therein is true and correct, and that the application has been completed under their supervision.

14. Other information. Such other information as deemed necessary by the city manager to demonstrate compliance with this code.

C. Unless the city manager determines the existence of one or more of the grounds for denying the application, pursuant to section 5.150.250, the city manager shall grant the relocation application and modify the dispensary permit to reflect the new location. In granting a relocation application, the city manager may also modify the conditions on the permit.

5.150.250 Criteria for review.

A. The city manager may deny, revoke, suspend or modify a dispensary permit or deny a relocation application, on the following grounds:

1. The application(s) and/or documents submitted are incomplete, filed late, or not responsive to the requirements of this chapter.

2. The issuance of the dispensary permit or operation of the dispensary at the proposed location is inconsistent with state law, the provisions of this chapter, or this code.

3. The dispensary has generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the dispensary.

4. The dispensary has caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct.

5. The applicant, manager, or any employee is a juvenile.

6. The dispensary has a history of inadequate safeguards or procedures that show it would not comply with the operating requirements and standards in this chapter.

7. The dispensary has failed to pay fees, penalties, or taxes required by this code or has failed to comply with the production of records or other reporting requirements of this chapter.

8. The proposed location does not comply with the provisions of this code or is prohibited by state law.

9. The site plan, floor plan, or security plan do not incorporate features necessary to assist in reducing potential crime-related problems as specified in section 5.150.290. These features include, but are not limited to, security on site; procedure for allowing entry; openness to surveillance and control of the area, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting outdoor furnishings and features that encourage loitering and nuisance behavior.

10. The dispensary or one or more managers, employees, or volunteers have violated a provision of this chapter.

11. The proposed location of the dispensary is likely to adversely affect the health, peace, or safety of persons living or working in the surrounding area or contribute to a public nuisance.

12. One or more provisions of this code, conditions of the dispensary permit, conditions imposed by another city issued permit, or any provision of any other local, state law or federal law, regulation, order, or permit has been violated.

13. It appears, based upon the information before the city manager, that the applicant has provided a false statement of material fact or has knowingly omitted a material fact in the application for, or renewal of, a dispensary permit.

14. The applicant or one or more managers or employees has been convicted of a felony, or is currently on parole or probation for the sale or distribution of a controlled substance. A conviction within the meaning of this section means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant, any manager or any employee has been convicted of a felony if the person convicted has

obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.

15. The applicant or dispensary has previously or is currently engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

B. The provisions of article II relating to the denial of a marijuana business permit also apply to the denial of an application for relocation.

5.150.260 Issuance of dispensary permit.

A. After the phase two application is complete, as specified in section 5.150.230.B.5, the city manager shall either grant or deny a dispensary permit on or before December 31, 2014; provided that, if the applicant files a complete application for the conditional use permit, including full payment of all application fees, on or before December 31, 2014, the city manager shall either grant or deny a dispensary permit on or before May 31, 2015.

B. In granting a permit, the city manager may impose conditions on the permit.

C. Conditions placed on the medical marijuana dispensary conditional use permit issued under the Planning and Development Code shall be conditions of the dispensary permit. Violations of the conditional use permit's conditions are grounds for suspending or revoking the dispensary permit. Nothing in this section shall be construed to limit the authority of the city manager to place additional conditions upon the dispensary permit.

5.150.270 Term of permits and renewals.

A. Unless revoked on an earlier date, all dispensary permits expire one year after the date of issuance.

B. A dispensary permit may be renewed for additional periods of one year by filing an application for renewal with the city manager's office. Applications shall be on forms provided by the city and shall be accompanied by the annual dispensary permit program fee, in the amount established by resolution of the city council. The application for renewal and the fee shall be filed at least 30 days, but not more than 60 days, prior to the expiration of the permit. If a timely renewal application is filed, the dispensary permit's expiration shall be stayed until the date that notification is provided by the city manager pursuant to subsection G of this section.

C. Applications for renewal filed less than 30 days prior to the expiration of the dispensary permit shall not stay the expiration date of the permit and may be rejected or denied.

D. The city manager shall either approve or deny the renewal of a dispensary permit within 90 days from the date the application for renewal is filed.

E. Applications for renewal shall be acted on using the criteria for review in section 5.150.250. The city manager may add, remove, or modify permit conditions as a condition of permit renewal.

F. If the city manager denies the application for renewal of a dispensary permit, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the dispensary may appeal the denial in accordance with section 5.150.140.

3. A statement that the failure to appeal the denial will constitute a waiver of all rights to an appeal hearing, and the denial will be final.

G. The denial of a renewal shall cause the dispensary permit to expire and the dispensary shall cease operations within 15 days from the date notice of denial is served. Continued operations shall be unlawful.

H. If the city manager approves the application for renewal with new or modified conditions the dispensary shall have 10 days from the date the notice of renewal is served on the dispensary to file an appeal of the proposed conditions in accordance with section 5.150.140. Failure to properly file a written appeal of the proposed conditions within 10 days of the date of service of the notice of renewal shall constitute a waiver of all rights to an appeal hearing, and the proposed conditions shall be deemed permanent conditions of the permit. Failure to properly and timely appeal the notice of renewal with the proposed conditions shall also constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the city manager's decision.

5.150.280 Dispensary location.

No person shall operate a dispensary at any place other than the specific location for which the dispensary permit is granted. A dispensary may seek to modify

the location for which the dispensary permit is granted by submitting an application in accordance with section 5.150.240.

5.150.290 Operating requirements.

Dispensaries whether permitted or not, shall comply at all times with the following:

A. Criminal History. No person who has been convicted of a felony, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall operate the dispensary; manage or handle the receipts, expenses, or medical marijuana of the dispensary; or deliver marijuana or marijuana products to members for the dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

B. Juveniles.

1. No juvenile shall operate a dispensary in any capacity, including but not limited to, as a manager, employee, contractor, or volunteer.

2. No juvenile shall be allowed on the dispensary property unless they are a qualified patient or a primary caregiver, and they are accompanied by their parent or legal guardian.

C. Operating Hours. The maximum hours of operation shall be daily from seven a.m. to nine p.m. unless the city manager imposes more restrictive hours as a condition of the permit.

D. Dispensary Size and Access.

1. The dispensary building shall not exceed 8,000 square feet.

2. Managers, employees, and volunteers must be registered members of the dispensary.

3. All entrances into the dispensary's building shall be locked from the exterior at all times with entry controlled by dispensary personnel.

4. Only dispensary members and persons with bona fide purposes for being in the dispensary shall be allowed entry into the dispensary property. Nonmembers shall be escorted by a manager at all times while in the dispensary building.

E. Dispensing Operations.

1. A dispensary shall only distribute to members that are:

a. Qualified patients with a currently valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card; or

b. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.

2. A dispensary shall not have a physician on the dispensary property to evaluate patients or provide a recommendation for medical marijuana.

3. Notwithstanding the provisions of chapter 9.08 to the contrary, up to 150 square feet of the dispensary building may be utilized for display and distribution of drug paraphernalia necessary for administering medical marijuana, including but not limited to, rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such paraphernalia may only be provided to members and shall not generate a profit.

4. A dispensary shall not conduct or engage in the commercial sale of products, goods, or services. The term "commercial sale" does not include the provision of marijuana paraphernalia as specified above in subsection E.3, or the provision of services, for members only, that do not generate a profit and are incidental to the medicinal use of marijuana, such as yoga, meditation, and substance abuse counseling.

5. All distribution of medical marijuana must be conducted within the enclosed building areas of the dispensary property, except for delivery in accordance with section 5.150.300.

F. Consumption Restrictions. Marijuana shall not be smoked, ingested or otherwise consumed in any form on, or within 20 feet of, the dispensary property.

G. Dispensary Supply and Distribution.

1. A dispensary may only possess an amount of medical marijuana consistent with each member's reasonable medical needs.

2. Except for immature nursery stock marijuana plants, no medical marijuana shall be grown or cultivated on the dispensary property.

3. A dispensary shall acquire its supply of medical marijuana only from its members.

4. A dispensary shall not purchase or otherwise supply itself with medical marijuana from nonmembers.

5. A dispensary shall operate on a not-for-profit basis. It may credit its members for medical marijuana they provide to it, which it may then distribute to other members. Members may also reimburse the dispensary for medical marijuana or marijuana paraphernalia that has been distributed to them. Any monetary reimbursement that members provide to the dispensary shall not exceed the dispensary's overhead costs and expenses for operating the dispensary, including reasonable compensation for services provided to members.

6. A dispensary shall not distribute or sell medical marijuana or marijuana paraphernalia to non-members or for a profit.

7. A dispensary shall comply with the operating criteria for the distribution of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

8. Dispensary operations shall not result in the diversion of marijuana for nonmedical purposes in any manner that violates local or state law.

H. Operating Plans.

1. Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive persons to verify that they are members of that dispensary or to determine whether the person meets the criteria of a valid qualified patient or primary caregiver. A dispensary shall also have a separate and secure area designated for distributing medical marijuana to its members. The main entrance shall be located and maintained clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets or sidewalks.

2. Storage. A dispensary shall have adequate locked storage on the dispensary property, identified and approved as a part of the security plan, for after-hours storage of medical marijuana. Medical marijuana shall be stored at the dispensary property in secured rooms that are completely enclosed or in a safe that is bolted to the floor.

3. Odor Control. A dispensary shall have an air treatment system that prevents odors generated from the storage of marijuana on the dispensary property from being detected by any reasonable person of normal sensitivity outside the dispensary property.

4. Security Plans. A dispensary shall comply with a security plan that is approved by the city manager that includes, but is not limited to, building security specifications, lighting, alarms, and adequate state licensed security personnel to patrol the dispensary area in order to preserve the safety of persons and to protect the dispensary from theft.

5. Security Cameras. Security surveillance cameras and a video recording system shall be installed to monitor the interior, main entrance, and exterior dispensary area to discourage loitering, crime, and illegal or nuisance activities. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present in the dispensary area.

6. Security Video Retention. Video from the security surveillance cameras shall be maintained for a period of not less than 30 days and shall be made available to the city upon request.

7. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition.

8. Concealed. A dispensary shall not allow or permit medical marijuana to be visible from the building exterior.

9. Emergency Contact. A dispensary shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the dispensary. The dispensary shall make good faith efforts to encourage neighborhood residents to call this person to solve operating problems, if any, before any calls or complaints are made to the city.

I. Signage.

1. The following signs in measurements of not less than 8 by 10 inches shall be clearly and legibly posted in a conspicuous location inside the dispensary where they will be visible to members in the normal course of a transaction, stating:

a. “Smoking, ingesting or consuming marijuana on this property or within 20 feet of the dispensary is prohibited.”

b. "Juveniles are prohibited from entering this property unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian."

c. "Neither the City of Sacramento, County of Sacramento, nor any other governmental agency has tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed at this location."

d. "The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law."

2. Signs on the dispensary building shall not obstruct the entrance or windows of the dispensary.

J. Maintenance of Records

1. A dispensary shall maintain the following records on the dispensary property:

a. The name, address, and telephone number(s) of the owner and landlord of the dispensary property.

b. The name, address, and telephone number(s) of each member and manager who participates in the cultivation of medical marijuana for the benefit of the dispensary.

c. The name, date of birth, physical address, and telephone number(s) of each member and manager of the dispensary; the date each member and manager joined the dispensary; the nature of each member's and manager's participation in the dispensary; and the status of each member and manager as a qualified patient or primary caregiver.

d. A copy of each member's and qualified patient's written physician recommendation and the designation of a primary caregiver by a qualified patient.

e. A written accounting of all cash and in-kind contributions, reimbursements, and reasonable compensation provided by the managers and members to the dispensary, and all expenditures and costs incurred by the dispensary.

f. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

g. A copy of the dispensary's most recent year's financial statement and tax return.

h. An inventory record documenting the dates and amounts of medical marijuana received at the dispensary, the daily amounts of medical marijuana stored on the dispensary property, and the daily amounts distributed to members.

i. Proof of a valid and current dispensary permit issued by the city in accordance with this chapter. Every dispensary shall display at all times during business hours the dispensary permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the dispensary.

2. These records shall be maintained by the dispensary in printed format for a period of not less than three years and shall be produced to the city within 24 hours after receipt of the city's request.

3. Any loss, damage or destruction of these records shall be reported to the city manager within 24 hours of the loss, damage or destruction.

K. Site Management. The dispensary shall prevent and eliminate conditions in the dispensary area that constitute a nuisance.

L. Trash, Litter, Graffiti.

1. The dispensary shall maintain the sidewalks within 20 feet of the dispensary property as well as any parking lots under the control of the dispensary, free of litter, debris, and trash.

2. Notwithstanding any provisions of this code to the contrary, the dispensary shall remove all graffiti from the dispensary property and parking lots under the control of the dispensary within 72 hours of its application.

M. Alcoholic Beverages. No dispensary or manager shall cause or permit the sale, distribution, or consumption of alcoholic beverages on the dispensary property; hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages; or operate a business on or adjacent to the dispensary property that sells alcoholic beverages. No alcoholic beverages shall be allowed or stored on the dispensary property.

N. Indemnification. Every application filed or permit issued under this chapter shall contain a term or condition requiring the dispensary, through its

managers, to execute an agreement in a form approved by the city attorney whereby the dispensary: (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from: (a) any repeal or amendment of this chapter and/or the Planning and Development Code relating to medical marijuana dispensaries, or (b) any arrest or prosecution of the dispensary or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies and holds harmless the city and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution of medical marijuana provided at the dispensary.

5.150.300 Delivery of marijuana and marijuana products.

A. Notwithstanding any provision of this code to the contrary, a dispensary may deliver marijuana and marijuana products from the dispensary to a member of the dispensary, subject to the provisions of this section.

B. No dispensary shall deliver marijuana or marijuana products from a facility other than the dispensary, such as a separate storage facility or a marijuana product manufacturing facility.

C. No dispensary shall deliver marijuana or marijuana products to a location where the delivery is prohibited by the governing city, county, or city and county.

D. A dispensary that delivers marijuana or marijuana products shall maintain a delivery log of the following documents and information relating to each delivery:

1. A delivery request that includes the date of the request, the full name of the member requesting the delivery, a specific description of the items requested, and the address to which the items are to be delivered;

2. The name of the person that made the delivery; and

3. The date and time of the delivery.

E. A person delivering marijuana or marijuana products on behalf of a dispensary shall carry the following items:

1. A copy of the dispensary's current dispensary permit;

2. The person's government-issued identification; and

3. A physical copy of the delivery request as described in subsection C.1.

F. Upon demand of a peace officer or city employee authorized to enforce this chapter, a person delivering marijuana or marijuana products pursuant to this section shall present the items listed in subsection E for examination.

5.150.310 Dispensary must be a collective or cooperative.

A. A medical marijuana dispensary shall operate only as a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and shall operate on a not-for-profit basis.

B. A manager of a medical marijuana dispensary must be a member registered with that medical marijuana dispensary.

Article IV. Marijuana Cultivation

5.1506.320 Marijuana cultivation permit required.

A. No person shall cultivate marijuana without a valid marijuana cultivation permit issued pursuant to this article.

B. The types of marijuana cultivation permits issued pursuant to this article include:

1. Class A, for indoor cultivation of less than or equal to 5,000 square feet of total canopy size on one cultivation site.

2. Class B, for indoor cultivation of between 5,001 and 10,000 square feet of total canopy size on one cultivation site.

3. Class C, for indoor cultivation of between 10,001 and 22,000 square feet of total canopy size on one cultivation site.

C. This article does not apply to the cultivation of marijuana in accordance with chapter 8.132.

5.150.330 Fees.

A. The following marijuana cultivation permit program fees are established and imposed:

1. Class A marijuana cultivation permit program fee;

2. Class B marijuana cultivation permit program fee; and

3. Class C marijuana cultivation permit program fee.

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

5.150.340 Applications for marijuana cultivation permit.

A. A person may apply for a marijuana cultivation permit, or a permit renewal, by filing an application with the city manager. The application shall be on a form approved by the city manager and may require any information or documentation consistent with the provisions of this code and state law, including the following:

1. Applicant.

a. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.

b. The phone number and address to which notice of action on the application and correspondence is to be mailed.

2. Interested parties. The name, address, telephone number, title, and function of each of the interested parties described in section 5.150.410.

3. Background checks. For each of the interested parties identified pursuant to subsection A.2:

a. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

b. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.

c. Consent to fingerprinting and a criminal background investigation.

4. Cultivation site.

a. Description. A general description of the proposed cultivation site, including the street address, parcel number, the total square footage of the site, the total square footage of marijuana canopy, and the characteristics of the surrounding area.

b. Floor plan. A scaled floor plan for each level of each building that makes up the cultivation site, including the entrances, exits, walls, and cultivation areas. The floor plan must be professionally prepared by a licensed civil engineer or architect.

c. Site plan. A scaled site plan of the cultivation site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries. The site plan must be professionally prepared by a licensed civil engineer or architect.

d. Compliance with the Planning and Development Code. A copy of a valid conditional use permit approved by the city for the proposed location.

e. Statement of owner's consent. Written consent of the owner or landlord of the proposed site to operate a marijuana cultivation business, specifying the street address and parcel number.

5. Security.

a. Security plan. A detailed security plan outlining the measures that will be taken to ensure the safety of persons and property on the cultivation site. The security plan must be prepared by a qualified professional.

b. Lighting plan. A lighting plan showing existing and proposed exterior and interior lights that will provide adequate security lighting for the use.

6. Odor control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent odors generated from the cultivation and storage of marijuana from being detected outside the buildings on the cultivation site.

7. Business operations.

a. Business plan. A plan describing how the marijuana cultivation business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include plans for handling cash and transporting marijuana and marijuana products to and from the cultivation site.

b. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the surrounding community, including the neighborhood and businesses, and how the designee can be contacted.

c. Employee and community benefit plans. Description of all employee or community benefit plans, if any, such as increased pay or benefits for employees, plans to donate products or services to low income patients, support for local social or educational programs, or support for small businesses.

d. State licenses. Copies of the state licenses relating to marijuana, including cultivation licenses, the applicant holds.

e. Tax compliance. A current copy of the applicant's city business operations tax certificate, state sales tax seller's permit, and the applicant's most recent year's financial statement and tax returns.

f. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cultivation business.

g. Budget. A copy of the applicant's most recent annual budget for operations.

h. Price list. A list of the most recent prices for all products and services provided by the applicant.

8. City authorization. Authorization and consent for the city manager to seek verification of the information contained within the application.

9. Applicant's certification. A statement dated and signed by the applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the applicant's supervision.

10. Indemnification. An agreement, in a form approved by the city attorney, whereby the applicant: (1) releases the city, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (a) any repeal or amendment of this chapter or any provision of the Planning and Development Code relating to marijuana cultivation, and (b) any arrest or prosecution of the applicant or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies, and holds harmless the city and its

agents, officers, elected officials, and employees from and against any and all claims or actions: (a) brought by adjacent or nearby property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from operations at the cultivation site, and (b) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of marijuana produced at the cultivation site.

B. Every application for a marijuana cultivation permit shall be accompanied by a nonrefundable marijuana cultivation permit program fee.

C. No person shall knowingly make a false statement of fact or knowingly omit any information that is required in an application for a marijuana cultivation permit.

5.150.350 Application process.

The city manager is authorized to establish procedures and guidelines to process marijuana cultivation business permit applications. To ensure that applications for smaller cultivation sites are provided an equal opportunity to be processed as larger sites, the procedures and guidelines may call for a process that considers the canopy size being applied for when determining the order of application processing.

5.150.360 Denial of a marijuana cultivation permit.

A. The city manager may deny a marijuana cultivation permit if the city manager determines that one or more of the following circumstances exist:

1. The application received is incomplete, filed late, or not responsive to the requirements of this article;

2. The application contains a false or misleading statement or omission of a material fact;

3. The operation of a cultivation site described in the application fails to comply with any of the requirements in this code, state law, or any other regulation;

4. The applicant or any of its managers has any unpaid and overdue administrative penalties imposed for violations of this chapter;

5. The applicant has not paid the applicable business operations tax pursuant to chapter 3.08;

6. Within 12 months of the date of application, either the applicant has had its marijuana cultivation permit revoked; or any of its managers were associated with another business that had its marijuana cultivation permit revoked; or

7. Operation of the marijuana cultivation site is a threat to the public health, safety, or welfare.

B. The denial of a marijuana cultivation permit shall comply with article III.

5.150.370 Terms of marijuana cultivation permit; renewal.

A. A marijuana cultivation permit issued pursuant to this article is valid for two years from the date that the permit is issued, unless suspended or revoked sooner.

B. A marijuana cultivation permit is valid for only one cultivation site.

C. Conditions placed on the conditional use permit issued under the Planning and Development Code are also conditions of the cultivation permit. Any violation of the conditional use permit's conditions is grounds for suspending or revoking the cultivation permit.

D. The city manager may impose additional conditions on the cultivation permit, including the maximum square footage of canopy allowed, number and types of equipment (lights, air filters, carbon dioxide generators, etc.) allowed, and security features.

E. To renew a marijuana cultivation permit, the permittee shall submit an application in accordance with section 5.150.340. The permittee shall submit the application no later than 30 days prior to the permit expiration date. Untimely applications are subject to a late penalty in the amount established by resolution of the city council.

5.150.380 Suspending, modifying, or revoking a marijuana cultivation permit.

A. The city manager may suspend, modify, or revoke a marijuana cultivation permit issued pursuant to the provisions of this chapter for any of the following reasons:

1. One or more of the circumstances upon which a marijuana cultivation permit could be denied, as described in section 5.150.330, exists or has occurred;

2. One or more conditions of the marijuana cultivation permit has been violated; or

3. The permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this chapter.

B. The suspension, modification, or revocation of a marijuana cultivation permit shall comply with article III.

5.150.390 Collective or cooperative cultivation.

A. A marijuana cultivation business must operate as a cooperative or collective of four or more members who associate at a particular location to collectively or cooperatively cultivate marijuana, and operate on a not-for-profit basis.

B. Each manager and staff of a marijuana cultivation business must be a member who is registered with that marijuana cultivation business.

5.150.400 Indoor cultivation only.

A. A marijuana cultivation permittee shall only cultivate marijuana in a fully enclosed building.

B. A marijuana cultivation permittee shall not allow marijuana or marijuana products on the cultivation site to be visible from the public right of way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

5.150.410 Interested parties.

A. A marijuana cultivation business shall provide the city with names and addresses of all of the following interested parties:

1. Persons with at least a 10% interest in the marijuana cultivation business;

2. Partners, officers, directors, and stockholders of every corporation, limited liability company, or general or limited partnership that owns at least 10% of the stock, capital, profits, voting rights, or membership interest of the marijuana cultivation business or that is one of the partners in the marijuana cultivation business;

3. The managers of the marijuana cultivation business; and

4. The staff of the marijuana cultivation business.

B. The permittee shall notify the city of any change in the information above within 30 days of the change.

C. All interested parties, as described in subsection A, must submit to fingerprinting and a criminal background check by the city.

D. No person shall be an interested party, as described in subsection A, if he or she is charged with or convicted of a felony; has been charged with or convicted of a violation of California Penal Code section 186.22 (participation in a criminal street gang); or is currently on parole or probation for an offense relating to the sale or distribution of a controlled substance. "Convicted" within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted. "Charged" within the meaning of this section means (1) an indictment was issued by a grand jury, or an information, complaint, or similar pleading was issued by the United States Attorney, district attorney, city attorney, or other governmental official or agency authorized to prosecute crimes, and (2) the criminal proceedings are currently pending.

5.150.420 Emergency contact manager.

A marijuana cultivation permittee shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the marijuana cultivation business.

5.150.430 Community relations manager.

A marijuana cultivation permittee shall provide the city manager with the current name and primary and secondary telephone numbers of at least one manager to communicate with the surrounding neighborhoods and businesses. The marijuana cultivation business shall make good faith efforts to encourage neighborhood residents to call this person to solve problems, if any, before any calls or complaints are made to the city.

5.150.440 Cultivation site buildings.

A cultivation site shall comply with the following requirements:

A. Entrances. All entrances into the buildings on the cultivation site shall be locked at all times with entry controlled by the marijuana cultivation permitee's managers and staff.

B. Main entrance and lobby. The cultivation site shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions.

Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the cultivation areas.

C. Cultivation area. All cultivation areas in any building on the cultivation site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the marijuana cultivation permittee.

D. Transport area. Each building with a cultivation area shall have an area designed for the secure transfer of marijuana from the cultivation area to a vehicle for transportation.

E. Storage area. Each building with a cultivation area shall have adequate storage space for marijuana that has completed the cultivation process or is otherwise not being cultivated. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the marijuana cultivation permittee.

5.150.450 Cultivation site security.

A cultivation site shall comply with the following security requirements:

A. A marijuana cultivation permittee shall comply with the security plan that is approved by the city manager, which plan may include building specifications, lighting, alarms, and state-licensed security personnel.

B. Each security plan approved by the city manager must include the following:

1. Security surveillance cameras. Security surveillance cameras and a video recording system must be installed to monitor all doors into the buildings on the cultivation site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the cultivation site. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.

2. Security video recording and retention. Video from the security surveillance cameras must be recording at all times (24 hours a day, seven days a week) and the recording shall be maintained for at least 30 days. The video recordings shall be made available to the city upon request.

3. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.

C. A marijuana cultivation permittee shall report to the city police department all criminal activity occurring on the cultivation site.

5.150.460 Odor control.

A marijuana cultivation permittee shall prevent all odors generated from the cultivation and storage of marijuana from escaping from the buildings on the cultivation site, such that the odor cannot be detected by a reasonable person of normal sensitivity outside the buildings.

5.150.470 Display of marijuana cultivation permit.

The marijuana cultivation permittee shall display its current valid marijuana cultivation permit issued in accordance with this article inside the lobby or waiting area of the main entrance to the cultivation site. The permit shall be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.

5.150.480 Signs.

A. A marijuana cultivation permittee shall post in the lobby of the cultivation site signs that state the following:

1. "This site is not open to the public."

2. "Retail sales of any goods and services is prohibited."

3. "Juveniles are prohibited from entering this site."

4. "Smoking, ingesting, or consuming marijuana on or within 20 feet of this site is prohibited."

B. Each sign described in subsection A must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.

5.150.490 Cultivation site restricted.

A. No marijuana cultivation permittee shall open their cultivation site to the public.

B. No marijuana cultivation permittee shall allow anyone on the cultivation site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and marijuana transporters.

C. A manager must be on the cultivation site at all times that any other person, except for security guards, is on the site.

D. While on the cultivation site, managers and staff of the marijuana cultivation permittee must wear their marijuana cultivation identification badge, issued by the city, at all times.

E. Any person other than managers or staff who are on the cultivation site must sign in, wear a visitor badge, and be escorted on the site by a manager at all times.

5.150.500 Juveniles prohibited.

A. No juvenile shall be on the cultivation site or operate a marijuana cultivation business in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.

B. No marijuana cultivation permittee shall allow any violation of subsection A.

5.150.510 Retail sales prohibited.

No person shall conduct any retail sales of any good or services on or from a permitted cultivation site.

5.150.520 Marijuana consumption prohibited.

No person shall smoke, ingest, or otherwise consume marijuana in any form on, or within 20 feet of, the cultivation site.

5.150.530 Alcohol prohibited.

No person shall possess, consume, or store any alcoholic beverage on the cultivation site.

5.150.540 Diversion.

No person shall give, sell, distribute, or otherwise transfer any marijuana cultivated on a permitted cultivation site in any manner that violates local or state law.

5.150.550 Maintenance of records.

A. A marijuana cultivation business shall maintain the following records in printed format for at least three years on the cultivation site and shall produce them to the city within 24 hours after receipt of the city's request:

1. The name, address, and telephone numbers of the owner and landlord of the property.

2. The name, date of birth, address, and telephone number of each manager and staff of the marijuana cultivation business; the date each was hired; and the nature of each manager's and staff's participation in the marijuana cultivation business.

3. A written accounting of all income and expenditures of the marijuana cultivation business, including, but not limited to, cash and in-kind transactions.

4. A copy of the marijuana cultivation business' commercial general liability insurance policy and all other insurance policies related to the operation of the business.

5. A copy of the marijuana cultivation business' most recent year's financial statement and tax return.

6. An inventory record documenting the dates and amounts of marijuana received at the cultivation site, the daily amounts of marijuana on the cultivation site, and the daily amounts of marijuana transported from the site.

B. A marijuana cultivation business shall report any loss, damage, or destruction of these records to the city manager within 24 hours of the loss, damage, or destruction.

5.150.560 Site management.

A. The marijuana cultivation permittee shall prevent and eliminate conditions on the cultivation site that constitute a nuisance.

B. The marijuana cultivation permittee shall maintain the exterior of the cultivation site, including any parking lots under the control of the permittee, free of litter, debris, and trash.

C. The permittee shall properly store and dispose of all waste generated on the cultivation site, including chemical and organic waste, in accordance with all applicable laws and regulations.

D. Notwithstanding any provisions of this code to the contrary, the permittee shall remove all graffiti from the cultivation site and parking lots under the control of the permittee within 72 hours of its application.

SECTION 3.

The adoption of this ordinance is not intended to and does not affect any administrative, civil, criminal, or other actions or proceedings brought or to be brought to implement or enforce any provisions of the Sacramento City Code, as they existed prior to the effective date of this ordinance. The provisions of the Sacramento City Code as they exist prior to the effective date of this ordinance shall continue to be operative and effective with regard to any such actions or proceedings.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE DELETING AND ADDING CHAPTER 5.150 OF THE SACRAMENTO CITY CODE, RELATING TO MARIJUANA BUSINESSES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.150 of the Sacramento City Code is deleted.

SECTION 2.

Chapter 5.150 is added to the Sacramento City Code to read as follows:

Chapter 5.150 MARIJUANA BUSINESSES

Commented [SYI1]: Title changed to include all marijuana businesses.

Article I. General Provisions

Commented [SYI2]: Articles created for organization.

5.150.010 Purpose and intent.

In 1996, California voters approved Proposition 215, known as the Compassionate Use Act, which was later codified at California Health and Safety Code section 11362.5. The Compassionate Use Act ensures that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction under state law.

In 2003, the State enacted Senate Bill 420, known as the Medical Marijuana Program, codified at California Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement the provisions, and clarify the intent, of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program. One such regulation, California Health and Safety Code section 11362.775, removed state-level criminal and civil sanctions for the collective or cooperative cultivation of medical marijuana.

In 2015, the State enacted a trio of bills (AB 243, AB 266, and SB 643) now known as the Medical Cannabis Regulation and Safety Act. This Act established a state-wide regulatory and licensing structure for medical marijuana businesses, including cultivation, manufacturing, testing, dispensary, distribution, and transport. Marijuana businesses are required to obtain both state licenses and local permits to lawfully

operate. The Medical Cannabis Regulation and Safety Act created immunities for any licensee acting in accordance with state and local laws. However, state licenses are not expected to be issued prior to January 2018. One year after the state commences with the issuance of licenses, the Medical Marijuana Program's collective or cooperative model for the cultivation of medical marijuana is repealed.

Commented [SYI3]: Legislative history updated.

It is the purpose and intent of the city council to regulate medical marijuana businesses consistent with state law and to protect the health, safety, and welfare of the residents of the city. The regulations in this chapter do not interfere with a qualified patient's right to obtain and use marijuana as authorized under state law, nor do they criminalize the possession or cultivation of marijuana by qualified patients or their primary caregivers. Medical marijuana businesses shall comply with all provisions of the Sacramento City Code, state law, and all other applicable local codes and regulations. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use or consumption of marijuana under federal, state, or local law.

5.150.020 Definitions.

As used in this chapter:

"City manager" means the city manager or designee.

"Conditional use permit" means any conditional use permit issued by the city pursuant to the Planning and Development Code related to the operation of a medical marijuana dispensary.

"Cultivate" means to plant, grow, harvest, dry, cure, grade, or trim marijuana.

"Cultivation area" means the area on a cultivation site in which marijuana is cultivated.

"Cultivation site" means the portion of the parcel of real property upon which a marijuana cultivation business is operated.

"Dispensary" shall have the same definition as "medical marijuana dispensary," as set forth in this section.

"Dispensary area" means the dispensary property and the area within 100 feet of the dispensary property.

"Dispensary building" means the portion of a building within which a dispensary is operated.

"Dispensary permit" means a medical marijuana dispensary permit issued pursuant to this chapter.

"Dispensary property" means the parcel of real property or portion of the parcel of real property that is owned or leased by a dispensary and upon which a dispensary is operated.

"Drug paraphernalia" shall have the same definition as set forth in California Health and Safety Code section 11364.5.

"Identification card" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Juvenile" means any natural person who is under the age of 18 years.

"Manager" means a person with responsibility for the establishment, registration, supervision, or oversight of the operation of a marijuana business, including but not limited to, a person who performs the functions of a board member, director, officer, owner, operating officer, or manager of the marijuana business.

Commented [SYI4]: Changed from "management member" to "manager" so that it works with other marijuana businesses. The requirement that a manager is also a member has been separately stated in each chapter.

"Marijuana" has the same meaning as "cannabis" in section 19300.5 of the California Business and Professions Code, which includes marijuana as defined in California Health and Safety Code section 11018.

Commented [SYI5]: This definition matches the one used in Title 17.

"Marijuana business" means a business subject to the permit requirements of this chapter.

"Marijuana business permit" means any permit issued to a marijuana business pursuant to the provisions of this chapter.

"Marijuana cultivation business" means a business involving the cultivation of marijuana, including a nursery which produces clones, immature plants, seeds, or other agricultural products specifically for the planting, propagation, and cultivation of marijuana.

Commented [SYI6]: Including nurseries.

"Marijuana product" means an item containing marijuana or a substance derived from marijuana, such as concentrates, edibles, or topicals.

Commented [SYI7]: Similar but not identical to the definition of "manufactured cannabis" in the B&P Code.

"Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7 et seq.).

"Medical marijuana dispensary" means a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and operate on a not-for-profit basis, consistent with California Health and Safety Code section 11362.5; article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7); the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008; and this chapter. A medical marijuana dispensary shall not include the following uses: a clinic licensed pursuant to chapter 1 of division 2 of the California Health and Safety Code; a health care facility licensed pursuant to chapter 2 of division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to chapter 3.01 of division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to chapter 3.2 of division 2 of the California Health and Safety Code; and a residential hospice or a home health agency licensed pursuant to chapter 8 of division 2 of the California Health and Safety Code, as long as any such use complies with applicable laws including, but not limited to, California Health and Safety Code section 11362.5, article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7), and the Sacramento City Code.

"Member" means any qualified patient, primary caregiver, or person with an identification card who is registered with a marijuana business.

"Operate a dispensary" means to engage in or conduct the not-for-profit business of a dispensary, including, but not limited to, distributing medical marijuana and maintaining the facilities of a dispensary.

"Person with an identification card" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Physician" means a licensed medical doctor as defined in California Business and Professions Code section 4039.

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Private medical records" means records related to the medical history of a qualified patient and includes the recommendation of a physician for the medical use of medical marijuana and the designation of a primary caregiver by a qualified patient.

"Qualified patient" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Reasonable compensation" means compensation commensurate with wages and benefits paid to officers and employees of other not-for-profit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked.

"Staff" means a person other than a manager who works or provides services on the site of a marijuana business, whether as an employee, contractor, or volunteer.

5.150.030 All state and local licenses required.

Commented [SYI8]: New.

A. No marijuana business shall operate unless it is in possession of all applicable state and local licenses or permits.

B. Every marijuana business shall submit to the city manager a copy of any and all of its state and local licenses and permits required for its operation.

C. If any other applicable state or local license or permit required for a marijuana business's operation is denied, suspended, modified, revoked, or expired, the marijuana business shall notify the city manager in writing within 10 days.

5.150.040 Payment of taxes.

Commented [SYI9]: Moved from 5.150.100.

In addition to any fees established and imposed pursuant to this chapter, all marijuana businesses are required to pay all applicable taxes, including the business operations tax pursuant to title 3 and sales tax pursuant to state law.

5.150.050 Marijuana transfer between permitted businesses only.

Commented [SYI10]: New.

A marijuana business shall not transfer marijuana or marijuana products to or from another marijuana business, unless both businesses are in possession of all required state and local licenses and permits.

5.150.060 Permits not transferable.

Commented [SYI11]: Moved from 5.150.210.

Marijuana business permits issued pursuant to this chapter are not property and have no value. Marijuana business permits may not be transferred, sold, assigned or bequeathed expressly or by operation by law. Any attempt to directly or indirectly transfer a marijuana business permit shall be unlawful and void, and shall automatically revoke the permit.

5.150.070 Service of notices.

Commented [SYI12]: Moved from 5.150.080.

All notices required by this chapter shall be deemed issued and served upon the date they are either deposited in the United States mail, postage pre-paid, addressed to the applicant or marijuana business at the mailing address identified in its application,

the last updated address on file with the city manager's office, or the mailing address on the appeal form; or the date upon which personal service of the notice is provided to the applicant or a manager identified on the application or appeal form.

5.150.080 Inspection authority.

Commented [SYI13]: Moved from 5.150.140.

A. City officials may enter and inspect the site of a marijuana business at any reasonable time to ensure compliance and enforcement of the provisions of this chapter.

Commented [SYI14]: Changed to any reasonable time to account for cultivation businesses being operated 24 hours a day.

B. City officials may inspect and demand copies of records maintained by the marijuana business, except for private medical records, which shall be made available to law enforcement agencies only pursuant to a properly executed search warrant, subpoena, or court order.

C. No person shall refuse, impede, obstruct, or interfere with an inspection pursuant to this chapter.

5.150.090 Violations.

Commented [SYI15]: Moved from 5.150.220 and 5.150.230 and combined.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

B. Violations of this chapter are hereby declared to be public nuisances.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than $250 or more than $25,000 for each day the violation continues.

D. All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof.

5.150.100 Severability.

Commented [SYI16]: Moved from 5.150.240.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

Article II. Notice and Appeal Process for Marijuana Business Permits

5.150.110 Denial of marijuana business permit application.

Commented [SYI17]: Moved from 5.150.120

A. If the city manager denies a marijuana business permit after the application is accepted as complete, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the applicant may request reconsideration of the denial, in writing to the city manager, within 10 days of the date of service of the notice.

3. A statement that the failure to timely request reconsideration of the denial will constitute a waiver of all rights to reconsideration, and the denial will be final.

B. If the applicant properly files a request for reconsideration the city manager shall set the date of a hearing within 30 days from the date the request is filed. The hearing shall be conducted by the city manager.

C. Failure to properly file a written request for reconsideration of the notice of denial within 10 days of the date of service of the notice constitutes a waiver of all rights to a hearing, and the city manager's decision will be final. Failure to properly and timely file a request for reconsideration of the notice of denial also constitutes a failure to exhaust administrative remedies and is a bar to any judicial action pertaining to the city manager's decision.

D. If the applicant files a proper request for reconsideration and then fails to appear at the hearing, the request for reconsideration is abandoned, and the decision of the city manager is final and may not be further appealed. Failure to appear at the hearing constitutes a waiver of all rights to a hearing and also constitutes a failure to exhaust administrative remedies and is a bar to any judicial action pertaining to the city manager's decision.

E. Written notice of the decision of the city manager shall be served on the applicant within 10 days following the hearing.

F. The decision of the city manager under this section is subject to appeal in accordance with section 5.150.140.

5.150.120 Suspension, modification, and revocation.

Commented [SYI18]: Moved from 5.150.160.

A. In addition to any other remedy authorized by law, the city manager may suspend, modify, or revoke a marijuana business permit.

B. If the city manager proposes to suspend, modify, or revoke a permit, written notice of the proposed suspension, modification, or revocation shall be served on the marijuana business at least 15 days prior to the date of the proposed suspension, modification, or revocation. The notice shall contain:

1. A brief statement of the grounds for the suspension, modification, or revocation.

2. A statement that the dispensary may appeal the action in accordance with section 5.150.140.

3. A statement that the failure to appeal the notice of suspension, modification, or revocation will constitute a waiver of all rights to an appeal hearing, and the suspension, modification, or revocation will be final.

C. Notwithstanding subsection B of this section, the city manager may immediately revoke the marijuana business permit without prior notice under the following circumstances:

1. A medical marijuana dispensary is in violation of section 5.150.290.A (criminal history);

2. A marijuana cultivation business is in violation of section 5.150.410.D (criminal history); or

3. Any marijuana business holding a valid marijuana business permit issued pursuant to this chapter ceases operation for 90 consecutive days or longer.

5.150.130 Marijuana business permit appeal fee.

Commented [SYI19]: Moved from 5.150.100.

A. The marijuana business permit appeal fee is established and imposed pursuant to the provisions of this article.

B. The city council shall establish by resolution the amount of the appeal fee and any related penalties.

5.150.140 Denial, suspension, revocation, and nonrenewal—Appeals.

Commented [SYI20]: Moved from 5.150.170.

A. Except as otherwise provided in this chapter, any applicant or marijuana business aggrieved by the decision of the city manager in conditioning, denying,

suspending, revoking, modifying, or not renewing a marijuana business permit may appeal the decision by filing a written appeal, accompanied by a nonrefundable appeal fee, with the city manager's office within 10 days from the date of service of the notice from the city manager. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside; and

3. The verification (by declaration under penalty of perjury) of the applicant or marijuana business as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

1. If the appeal is received by the city manager no later than 15 days prior to the next regular appeal hearing, it shall be calendared for that hearing.

2. If the appeal is received by the city manager on a date less than 15 days prior to the next appeal hearing, it shall be calendared for the next regular appeal hearing.

D. Written notice of the time and place of the hearing shall be provided at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of the notice to be delivered to the appellant personally or by mailing a copy addressed to the appellant at the address shown on the appeal.

E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and the city manager's decision shall be final.

F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

G. Any condition, denial, suspension, revocation, or nonrenewal of a marijuana business permit shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

5.150.150 Appeal hearings.

Commented [SYI21]: Moved from 5.150.180.

A. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

D. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

5.150.160 Conduct of hearing.

Commented [SYI22]: Moved from 5.150.190.

A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subdivisions (a), (b), and (c) shall apply to hearings under this chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing.

2. To introduce documentary and physical evidence.

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.

4. To impeach any witness regardless of which party first called the witness to testify.

5. To rebut the evidence presented against the party.

6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city.

5.150.170 Form and contents of decision.

Commented [SYI23]: Moved from 5.150.200.

A. If it is shown, by a preponderance of the evidence, that one or more grounds exist to condition, deny, suspend, revoke, modify, or not renew a marijuana business permit, the hearing examiner shall affirm the city manager's decision. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision is final when signed by the hearing examiner and served as provided in this section.

Article III. Medical Marijuana Dispensaries

5.150.180 Medical marijuana dispensary permit required to operate.

Commented [SYI24]: Moved from 5.150.030.

A. No person shall operate a medical marijuana dispensary unless the dispensary has a valid medical marijuana dispensary permit issued pursuant to this chapter.

B. Neither the obtaining of a dispensary permit nor compliance with the operating standards provided in this chapter shall excuse any violation of this code or state law.

5.150.190 Fees.

Commented [SYI25]: Moved from 5.150.100.

A. The following fees are established and imposed pursuant to the provisions of this article:

1. Dispensary permit application fee;

2. Dispensary permit program fee; and

3. Dispensary relocation fee.

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

5.150.200 Registered medical marijuana dispensaries.

Commented [SYI26]: Moved from 5.150.040

A. For purposes of this section a "registered medical marijuana dispensary" means a dispensary: (1) that was properly registered with the city manager pursuant to Ordinance No. 2009-033; and (2) that is organized and operates as a cooperative or collective within the meaning of this chapter; and (3) the owner and operator of which has not been cited or convicted of maintaining a public nuisance or of a public safety violation of state or local law relating to the operation of a medical marijuana dispensary by the city or any governmental law enforcement agency.

B. An application for a dispensary permit may only be filed by a registered medical marijuana dispensary.

C. The applicant for the dispensary permit must be the same owner(s) or principal(s) named on the medical marijuana dispensary's registration as of July 27, 2010, and must be a manager of the registered medical marijuana dispensary.

D. Notwithstanding the provisions of section 5.150.180, a person may continue to operate a registered medical marijuana dispensary without a dispensary permit until February 7, 2011. If a phase one or phase two application for a dispensary permit is or has been properly filed and has not been denied, a person may continue to operate that dispensary without a dispensary permit until May 31, 2015, and while the application approval or denial is pending.

E. The authorization to continue to operate a dispensary pursuant to subsection D of this section shall not entitle the applicant to an approval of their dispensary permit application, a determination that the dispensary is a legally established use under the provisions of this code, or legal nonconforming status.

5.150.210 Phase one applications for medical marijuana dispensary permit.

Commented [SYI27]: Moved from 5.150.050

A. Phase one applications for dispensary permits shall be filed with the city manager's office no later than February 7, 2011. Applications shall be on forms provided by the city and shall be accompanied by a nonrefundable dispensary permit application fee, in the amount established by resolution of the city council. Applications received after February 7, 2011, shall be rejected.

B. The phase one application shall be signed by one or more managers under penalty of perjury and shall set forth in writing:

1. Identity of the Dispensary. A description of the statutory entity or business form that will serve as the legal structure for the collective or cooperative and a copy of its formation and organizing documents, including but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement. If a corporation, limited liability company, or a general or limited partnership is a stockholder owning more than 10% of the stock or membership interest of an applicant's dispensary, or is one or more of the partners in an applicant's dispensary, the applicant shall set forth the names and addresses of each of the partners, officers, directors, and stockholders of the corporation, limited liability company, or general or limited partnership.

2. Management Information.

a. The name, address, telephone number, title, and function(s) of each manager of the dispensary.

b. For each manager, a legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

3. Applicant's Phone Number and Mailing Address. The phone number and address to which notice of action on the application and future correspondence is to be mailed.

4. Previous Addresses. Previous addresses of the applicant for the past five years immediately prior to the present address.

5. Verification of Age. Evidence that the applicant and all managers of the dispensary are at least 18 years of age.

6. Criminal Background.

a. A list of each misdemeanor and/or felony conviction, if any, of the applicant and the manager(s), whether the conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant or manager was convicted.

b. The applicant and each manager shall consent to fingerprinting and a criminal background investigation.

7. Employee Information. Number of employees, volunteers, and other persons who will work or provide services at the dispensary.

8. Plan of Operations. A plan describing how the dispensary will operate consistent with state law and the provisions of this chapter, including controls to:

a. Ensure that medical marijuana is not purchased or sold by the dispensary in a manner that would generate a profit.

b. Ensure that medical marijuana will be distributed to members only.

c. Ensure that access to the dispensary property is adequately monitored and restricted to members.

9. Dispensary Description. A description of the proposed location, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

10. Response to the Planning and Development Code. An explanation of how the dispensary complies or expects to comply with the Planning and Development Code, including, but not limited to, the location requirements.

11. Compliance with Applicable Taxes. The applicant shall provide a current copy of its business operations tax certificate and state sales tax seller's permit.

12. City Authorization. Authorization and consent for the city manager to seek verification of the information contained within the application.

13. Statement of Owner's Consent. Consent to operate a dispensary at the proposed location, specifying the street address and parcel number, from the owner or landlord, of the proposed location.

5.150.220 Review of phase one application.

Commented [SYI28]: Moved from 5.150.060.

A. Upon receiving a phase one application for a dispensary permit, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension of up to ten days to complete the phase one application.

B. If the city manager determines that the phase one application is complete and, on the face of the application, there appears to be no basis for denial of the permit under section 5.150.250, the city manager shall notify the applicant that it may continue to phase two in the application process pursuant to section 5.150.230.

C. If the application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase one application, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

D. In the event of denial, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful.

5.150.230 Review of phase two application.

Commented [SYI29]: Moved from 5.150.070

A. If the city manager notifies the applicant that it may continue to phase two in the application process the applicant shall, no later than March 31, 2014, file a phase two application with the city manager's office, that includes the following:

1. A nonrefundable dispensary permit program fee in the amount established by resolution of the city council. The dispensary permit program fee shall be in addition to any other fee imposed by this code.

2. Security Plan. A detailed security plan, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

3. Floor Plan. A scaled floor plan for each level of the entire building showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be professionally prepared by a licensed civil engineer or architect.

4. Site Plan. A scaled site plan of the parcel of real property on which the dispensary building is located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be professionally prepared by a licensed civil engineer or architect.

5. Accessibility Evaluation. A written evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect.

6. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1,000 feet of the dispensary property, and the uses of those properties, specifically including, but not limited to, any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

7. Lighting Plan. A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

8. Planning and Development Code Compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

9. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

10. A copy of the dispensary's annual budget for operations.

11. A copy of the dispensary's most recent year's financial statement and tax return.

12. A list of the most recent prices for all products and services provided by the dispensary.

13. Applicant's Certification. A statement dated and signed by each manager, under penalty of perjury, that the manager has personal knowledge of the information contained in the phase one and phase two applications, that the information contained therein is true and correct, and that the applications have been completed under their supervision.

14. Other Information. Such other information as deemed necessary by the city manager to demonstrate compliance with this code.

B. Complete Application.

1. Upon receiving a phase two application, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension up to 10 days to complete the phase two application.

2. An application is not to be considered incomplete for purposes of this subsection B if the sole document remaining to be filed is a copy of the conditional use permit referenced in subsection A.8 of this section.

3. If the phase two application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase two application for being incomplete, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

4. In the event of denial, for any reason, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful.

5. If the city manager determines that the application is complete, the completion date of a phase two application shall be the date when the city manager notifies the applicant that it has received all of the information or materials required, including compliance with subsection A.8 of this section; has determined that the content in the submitted documents is responsive to the requirements; and has deemed the application complete.

5.150.240 Relocation of a dispensary.

Commented [SYI30]: Moved from 5.150.075

A. A dispensary permittee may modify the location for which its dispensary permit is granted by filing a relocation application with the city manager's office.

B. An application for relocation must include the following:

1. Dispensary relocation fee. A nonrefundable dispensary relocation fee, in the amount established by city council resolution. The dispensary relocation fee is in addition to any other fee imposed by this code.

2. Applicant information. The name, address, and telephone number of the dispensary applying for relocation, to which notice of action on the application is to be mailed.

3. Proposed location. A description of the location proposed for the relocation of the dispensary, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

4. Reasons for relocation. A statement of the reasons for the proposed relocation.

5. Security plan. A detailed security plan for the proposed location, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

6. Floor plan. A scaled floor plan for each level of the building in which the dispensary is proposed to be located, showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be prepared by a licensed civil engineer or architect.

7. Site plan. A scaled site plan of the parcel of real property on which the dispensary building is proposed to be located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be prepared by a licensed civil engineer or architect.

8. Accessibility evaluation. A written evaluation of accessibility by the physically disabled to and within the proposed dispensary building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be prepared by a licensed civil engineer or architect.

9. Neighborhood context map. An accurate straight-line drawing depicting the boundaries of the proposed dispensary property, the boundaries of all other properties within 1,000 feet of the proposed dispensary property, and the uses of those properties, specifically including any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

10. Lighting plan. A plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

11. Planning and development code compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

12. Consent to operate. Consent to operate a dispensary at the proposed location, specifying the street address and parcel number, from the owner or landlord of the proposed location.

13. Applicant's certification. A statement dated and signed by each manager, under penalty of perjury, that the manager has personal knowledge of the information contained in the relocation application, that the information contained therein is true and correct, and that the application has been completed under their supervision.

14. Other information. Such other information as deemed necessary by the city manager to demonstrate compliance with this code.

C. Unless the city manager determines the existence of one or more of the grounds for denying the application, pursuant to section 5.150.250, the city manager shall grant the relocation application and modify the dispensary permit to reflect the new location. In granting a relocation application, the city manager may also modify the conditions on the permit.

5.150.250 Criteria for review.

Commented [SYI31]: Moved from 5.150.090.

A. The city manager may deny, revoke, suspend or modify a dispensary permit or deny a relocation application, on the following grounds:

1. The application(s) and/or documents submitted are incomplete, filed late, or not responsive to the requirements of this chapter.

2. The issuance of the dispensary permit or operation of the dispensary at the proposed location is inconsistent with state law, the provisions of this chapter, or this code.

3. The dispensary has generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the dispensary.

4. The dispensary has caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct.

5. The applicant, manager, or any employee is a juvenile.

6. The dispensary has a history of inadequate safeguards or procedures that show it would not comply with the operating requirements and standards in this chapter.

7. The dispensary has failed to pay fees, penalties, or taxes required by this code or has failed to comply with the production of records or other reporting requirements of this chapter.

8. The proposed location does not comply with the provisions of this code or is prohibited by state law.

9. The site plan, floor plan, or security plan do not incorporate features necessary to assist in reducing potential crime-related problems as specified in section 5.150.290. These features include, but are not limited to, security on site; procedure for allowing entry; openness to surveillance and control of the area, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting outdoor furnishings and features that encourage loitering and nuisance behavior.

10. The dispensary or one or more managers, employees, or volunteers have violated a provision of this chapter.

11. The proposed location of the dispensary is likely to adversely affect the health, peace, or safety of persons living or working in the surrounding area or contribute to a public nuisance.

12. One or more provisions of this code, conditions of the dispensary permit, conditions imposed by another city issued permit, or any provision of any other local, state law or federal law, regulation, order, or permit has been violated.

13. It appears, based upon the information before the city manager, that the applicant has provided a false statement of material fact or has knowingly omitted a material fact in the application for, or renewal of, a dispensary permit.

14. The applicant or one or more managers or employees has been convicted of a felony, or is currently on parole or probation for the sale or distribution of a controlled substance. A conviction within the meaning of this section means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant, any manager or any employee has been convicted of a felony if the person convicted has

Commented [SYI32]: Amended to be consistent with the existing operating requirements.

obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.

15. The applicant or dispensary has previously or is currently engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

B. The provisions of article II relating to the denial of a marijuana business permit also apply to the denial of an application for relocation.

5.150.260 Issuance of dispensary permit.

Commented [SYI33]: Moved from 5.150.110.

A. After the phase two application is complete, as specified in section 5.150.230.B.5, the city manager shall either grant or deny a dispensary permit on or before December 31, 2014; provided that, if the applicant files a complete application for the conditional use permit, including full payment of all application fees, on or before December 31, 2014, the city manager shall either grant or deny a dispensary permit on or before May 31, 2015.

B. In granting a permit, the city manager may impose conditions on the permit.

C. Conditions placed on the medical marijuana dispensary conditional use permit issued under the Planning and Development Code shall be conditions of the dispensary permit. Violations of the conditional use permit's conditions are grounds for suspending or revoking the dispensary permit. Nothing in this section shall be construed to limit the authority of the city manager to place additional conditions upon the dispensary permit.

5.150.270 Term of permits and renewals.

Commented [SYI34]: Moved from 5.150.150.

A. Unless revoked on an earlier date, all dispensary permits expire one year after the date of issuance.

B. A dispensary permit may be renewed for additional periods of one year by filing an application for renewal with the city manager's office. Applications shall be on forms provided by the city and shall be accompanied by the annual dispensary permit program fee, in the amount established by resolution of the city council. The application for renewal and the fee shall be filed at least 30 days, but not more than 60 days, prior to the expiration of the permit. If a timely renewal application is filed, the dispensary permit's expiration shall be stayed until the date that notification is provided by the city manager pursuant to subsection G of this section.

C. Applications for renewal filed less than 30 days prior to the expiration of the dispensary permit shall not stay the expiration date of the permit and may be rejected or denied.

D. The city manager shall either approve or deny the renewal of a dispensary permit within 90 days from the date the application for renewal is filed.

E. Applications for renewal shall be acted on using the criteria for review in section 5.150.250. The city manager may add, remove, or modify permit conditions as a condition of permit renewal.

Commented [SYI35]: Typo correction.

F. If the city manager denies the application for renewal of a dispensary permit, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the dispensary may appeal the denial in accordance with section 5.150.140.

3. A statement that the failure to appeal the denial will constitute a waiver of all rights to an appeal hearing, and the denial will be final.

G. The denial of a renewal shall cause the dispensary permit to expire and the dispensary shall cease operations within 15 days from the date notice of denial is served. Continued operations shall be unlawful.

H. If the city manager approves the application for renewal with new or modified conditions the dispensary shall have 10 days from the date the notice of renewal is served on the dispensary to file an appeal of the proposed conditions in accordance with section 5.150.140. Failure to properly file a written appeal of the proposed conditions within 10 days of the date of service of the notice of renewal shall constitute a waiver of all rights to an appeal hearing, and the proposed conditions shall be deemed permanent conditions of the permit. Failure to properly and timely appeal the notice of renewal with the proposed conditions shall also constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the city manager's decision.

5.150.280 Dispensary location.

Commented [SYI36]: Moved from 5.150.210.

No person shall operate a dispensary at any place other than the specific location for which the dispensary permit is granted. A dispensary may seek to modify

the location for which the dispensary permit is granted by submitting an application in accordance with section 5.150.240.

5.150.290 Operating requirements.

Commented [SYI37]: Moved from 5.150.130.

Dispensaries whether permitted or not, shall comply at all times with the following:

A. Criminal History. No person who has been convicted of a felony, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall operate the dispensary; manage or handle the receipts, expenses, or medical marijuana of the dispensary; or deliver marijuana or marijuana products to members for the dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

Commented [SYI38]: New. Delivery persons must be background checked.

B. Juveniles.

1. No juvenile shall operate a dispensary in any capacity, including but not limited to, as a manager, employee, contractor, or volunteer.

2. No juvenile shall be allowed on the dispensary property unless they are a qualified patient or a primary caregiver, and they are accompanied by their parent or legal guardian.

C. Operating Hours. The maximum hours of operation shall be daily from seven a.m. to nine p.m. unless the city manager imposes more restrictive hours as a condition of the permit.

D. Dispensary Size and Access.

1. The dispensary building shall not exceed 8,000 square feet.

2. Managers, employees, and volunteers must be registered members of the dispensary.

3. All entrances into the dispensary's building shall be locked from the exterior at all times with entry controlled by dispensary personnel.

4. Only dispensary members and persons with bona fide purposes for being in the dispensary shall be allowed entry into the dispensary property. Nonmembers shall be escorted by a manager at all times while in the dispensary building.

E. Dispensing Operations.

1. A dispensary shall only distribute to members that are:

a. Qualified patients with a currently valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card; or

b. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.

2. A dispensary shall not have a physician on the dispensary property to evaluate patients or provide a recommendation for medical marijuana.

3. Notwithstanding the provisions of chapter 9.08 to the contrary, up to 150 square feet of the dispensary building may be utilized for display and distribution of drug paraphernalia necessary for administering medical marijuana, including but not limited to, rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such paraphernalia may only be provided to members and shall not generate a profit.

4. A dispensary shall not conduct or engage in the commercial sale of products, goods, or services. The term "commercial sale" does not include the provision of marijuana paraphernalia as specified above in subsection E.3, or the provision of services, for members only, that do not generate a profit and are incidental to the medicinal use of marijuana, such as yoga, meditation, and substance abuse counseling.

5. All distribution of medical marijuana must be conducted within the enclosed building areas of the dispensary property, except for delivery in accordance with section 5.150.300.

Commented [SYI39]: New. Delivery allowed.

F. Consumption Restrictions. Marijuana shall not be smoked, ingested or otherwise consumed in any form on, or within 20 feet of, the dispensary property.

G. Dispensary Supply and Distribution.

1. A dispensary may only possess an amount of medical marijuana consistent with each member's reasonable medical needs.

2. Except for immature nursery stock marijuana plants, no medical marijuana shall be grown or cultivated on the dispensary property.

3. A dispensary shall acquire its supply of medical marijuana only from its members.

4. A dispensary shall not purchase or otherwise supply itself with medical marijuana from nonmembers.

5. A dispensary shall operate on a not-for-profit basis. It may credit its members for medical marijuana they provide to it, which it may then distribute to other members. Members may also reimburse the dispensary for medical marijuana or marijuana paraphernalia that has been distributed to them. Any monetary reimbursement that members provide to the dispensary shall not exceed the dispensary's overhead costs and expenses for operating the dispensary, including reasonable compensation for services provided to members.

6. A dispensary shall not distribute or sell medical marijuana or marijuana paraphernalia to non-members or for a profit.

7. A dispensary shall comply with the operating criteria for the distribution of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

8. Dispensary operations shall not result in the diversion of marijuana for nonmedical purposes in any manner that violates local or state law.

H. Operating Plans.

1. Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive persons to verify that they are members of that dispensary or to determine whether the person meets the criteria of a valid qualified patient or primary caregiver. A dispensary shall also have a separate and secure area designated for distributing medical marijuana to its members. The main entrance shall be located and maintained clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets or sidewalks.

2. Storage. A dispensary shall have adequate locked storage on the dispensary property, identified and approved as a part of the security plan, for after-hours storage of medical marijuana. Medical marijuana shall be stored at the dispensary property in secured rooms that are completely enclosed or in a safe that is bolted to the floor.

3. Odor Control. A dispensary shall have an air treatment system that prevents odors generated from the storage of marijuana on the dispensary property from being detected by any reasonable person of normal sensitivity outside the dispensary property.

4. Security Plans. A dispensary shall comply with a security plan that is approved by the city manager that includes, but is not limited to, building security specifications, lighting, alarms, and adequate state licensed security personnel to patrol the dispensary area in order to preserve the safety of persons and to protect the dispensary from theft.

5. Security Cameras. Security surveillance cameras and a video recording system shall be installed to monitor the interior, main entrance, and exterior dispensary area to discourage loitering, crime, and illegal or nuisance activities. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present in the dispensary area.

6. Security Video Retention. Video from the security surveillance cameras shall be maintained for a period of not less than 30 days and shall be made available to the city upon request.

7. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition.

8. Concealed. A dispensary shall not allow or permit medical marijuana to be visible from the building exterior.

9. Emergency Contact. A dispensary shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the dispensary. The dispensary shall make good faith efforts to encourage neighborhood residents to call this person to solve operating problems, if any, before any calls or complaints are made to the city.

I. Signage.

1. The following signs in measurements of not less than 8 by 10 inches shall be clearly and legibly posted in a conspicuous location inside the dispensary where they will be visible to members in the normal course of a transaction, stating:

a. "Smoking, ingesting or consuming marijuana on this property or within 20 feet of the dispensary is prohibited."

b. "Juveniles are prohibited from entering this property unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian."

c. "Neither the City of Sacramento, County of Sacramento, nor any other governmental agency has tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed at this location."

d. "The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law."

2. Signs on the dispensary building shall not obstruct the entrance or windows of the dispensary.

J. Maintenance of Records

1. A dispensary shall maintain the following records on the dispensary property:

a. The name, address, and telephone number(s) of the owner and landlord of the dispensary property.

b. The name, address, and telephone number(s) of each member and manager who participates in the cultivation of medical marijuana for the benefit of the dispensary.

c. The name, date of birth, physical address, and telephone number(s) of each member and manager of the dispensary; the date each member and manager joined the dispensary; the nature of each member's and manager's participation in the dispensary; and the status of each member and manager as a qualified patient or primary caregiver.

d. A copy of each member's and qualified patient's written physician recommendation and the designation of a primary caregiver by a qualified patient.

e. A written accounting of all cash and in-kind contributions, reimbursements, and reasonable compensation provided by the managers and members to the dispensary, and all expenditures and costs incurred by the dispensary.

f. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

g. A copy of the dispensary's most recent year's financial statement and tax return.

h. An inventory record documenting the dates and amounts of medical marijuana received at the dispensary, the daily amounts of medical marijuana stored on the dispensary property, and the daily amounts distributed to members.

i. Proof of a valid and current dispensary permit issued by the city in accordance with this chapter. Every dispensary shall display at all times during business hours the dispensary permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the dispensary.

2. These records shall be maintained by the dispensary in printed format for a period of not less than three years and shall be produced to the city within 24 hours after receipt of the city's request.

3. Any loss, damage or destruction of these records shall be reported to the city manager within 24 hours of the loss, damage or destruction.

K. Site Management. The dispensary shall prevent and eliminate conditions in the dispensary area that constitute a nuisance.

L. Trash, Litter, Graffiti.

1. The dispensary shall maintain the sidewalks within 20 feet of the dispensary property as well as any parking lots under the control of the dispensary, free of litter, debris, and trash.

2. Notwithstanding any provisions of this code to the contrary, the dispensary shall remove all graffiti from the dispensary property and parking lots under the control of the dispensary within 72 hours of its application.

M. Alcoholic Beverages. No dispensary or manager shall cause or permit the sale, distribution, or consumption of alcoholic beverages on the dispensary property; hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages; or operate a business on or adjacent to the dispensary property that sells alcoholic beverages. No alcoholic beverages shall be allowed or stored on the dispensary property.

N. Indemnification. Every application filed or permit issued under this chapter shall contain a term or condition requiring the dispensary, through its

managers, to execute an agreement in a form approved by the city attorney whereby the dispensary: (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from: (a) any repeal or amendment of this chapter and/or the Planning and Development Code relating to medical marijuana dispensaries, or (b) any arrest or prosecution of the dispensary or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies and holds harmless the city and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution of medical marijuana provided at the dispensary.

5.150.300 Delivery of marijuana and marijuana products.

Commented [SYI40]: New. Delivery regulations.

A. Notwithstanding any provision of this code to the contrary, a dispensary may deliver marijuana and marijuana products from the dispensary to a member of the dispensary, subject to the provisions of this section.

B. No dispensary shall deliver marijuana or marijuana products from a facility other than the dispensary, such as a separate storage facility or a marijuana product manufacturing facility.

C. No dispensary shall deliver marijuana or marijuana products to a location where the delivery is prohibited by the governing city, county, or city and county.

D. A dispensary that delivers marijuana or marijuana products shall maintain a delivery log of the following documents and information relating to each delivery:

1. A delivery request that includes the date of the request, the full name of the member requesting the delivery, a specific description of the items requested, and the address to which the items are to be delivered;

2. The name of the person that made the delivery; and

3. The date and time of the delivery.

E. A person delivering marijuana or marijuana products on behalf of a dispensary shall carry the following items:

1. A copy of the dispensary's current dispensary permit;

2. The person's government-issued identification; and

3. A physical copy of the delivery request as described in subsection C.1.

F. Upon demand of a peace officer or city employee authorized to enforce this chapter, a person delivering marijuana or marijuana products pursuant to this section shall present the items listed in subsection E for examination.

5.150.310 Dispensary must be a collective or cooperative.

Commented [SYI41]: This section added to be consistent with the cultivation provisions and so that the definition of "management member" could be changed to a generally applicable "manager".

A. A medical marijuana dispensary shall operate only as a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and shall operate on a not-for-profit basis.

B. A manager of a medical marijuana dispensary must be a member registered with that medical marijuana dispensary.

Article IV. Marijuana Cultivation

Commented [SYI42]: New Article relating to marijuana cultivation.

5.1506.320 Marijuana cultivation permit required.

A. No person shall cultivate marijuana without a valid marijuana cultivation permit issued pursuant to this article.

B. The types of marijuana cultivation permits issued pursuant to this article include:

1. Class A, for indoor cultivation of less than or equal to 5,000 square feet of total canopy size on one cultivation site.

Commented [SYI43]: Letters used here to distinguish it from state licenses which are by number.

2. Class B, for indoor cultivation of between 5,001 and 10,000 square feet of total canopy size on one cultivation site.

3. Class C, for indoor cultivation of between 10,001 and 22,000 square feet of total canopy size on one cultivation site.

C. This article does not apply to the cultivation of marijuana in accordance with chapter 8.132.

5.150.330 Fees.

A. The following marijuana cultivation permit program fees are established and imposed:

1. Class A marijuana cultivation permit program fee;

2. Class B marijuana cultivation permit program fee; and

3. Class C marijuana cultivation permit program fee.

Commented [SYI44]: These are required to be paid with the application, and will include costs of the entire program including application review, administration, and enforcement. Can we charge this to applicants who are ultimately denied?

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

5.150.340 Applications for marijuana cultivation permit.

A. A person may apply for a marijuana cultivation permit, or a permit renewal, by filing an application with the city manager. The application shall be on a form approved by the city manager and may require any information or documentation consistent with the provisions of this code and state law, including the following:

1. Applicant.

a. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.

b. The phone number and address to which notice of action on the application and correspondence is to be mailed.

2. Interested parties. The name, address, telephone number, title, and function of each of the interested parties described in section 5.150.410.

3. Background checks. For each of the interested parties identified pursuant to subsection A.2:

a. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

b. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.

c. Consent to fingerprinting and a criminal background investigation.

4. Cultivation site.

a. Description. A general description of the proposed cultivation site, including the street address, parcel number, the total square footage of the site, the total square footage of marijuana canopy, and the characteristics of the surrounding area.

b. Floor plan. A scaled floor plan for each level of each building that makes up the cultivation site, including the entrances, exits, walls, and cultivation areas. The floor plan must be professionally prepared by a licensed civil engineer or architect.

c. Site plan. A scaled site plan of the cultivation site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries. The site plan must be professionally prepared by a licensed civil engineer or architect.

d. Compliance with the Planning and Development Code. A copy of a valid conditional use permit approved by the city for the proposed location.

e. Statement of owner's consent. Written consent of the owner or landlord of the proposed site to operate a marijuana cultivation business, specifying the street address and parcel number.

5. Security.

a. Security plan. A detailed security plan outlining the measures that will be taken to ensure the safety of persons and property on the cultivation site. The security plan must be prepared by a qualified professional.

b. Lighting plan. A lighting plan showing existing and proposed exterior and interior lights that will provide adequate security lighting for the use.

6. Odor control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent odors generated from the cultivation and storage of marijuana from being detected outside the buildings on the cultivation site.

7. Business operations.

a. Business plan. A plan describing how the marijuana cultivation business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include plans for handling cash and transporting marijuana and marijuana products to and from the cultivation site.

b. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the surrounding community, including the neighborhood and businesses, and how the designee can be contacted.

c. Employee and community benefit plans. Description of all employee or community benefit plans, if any, such as increased pay or benefits for employees, plans to donate products or services to low income patients, support for local social or educational programs, or support for small businesses.

d. State licenses. Copies of the state licenses relating to marijuana, including cultivation licenses, the applicant holds.

e. Tax compliance. A current copy of the applicant's city business operations tax certificate, state sales tax seller's permit, and the applicant's most recent year's financial statement and tax returns.

f. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cultivation business.

g. Budget. A copy of the applicant's most recent annual budget for operations.

h. Price list. A list of the most recent prices for all products and services provided by the applicant.

8. City authorization. Authorization and consent for the city manager to seek verification of the information contained within the application.

9. Applicant's certification. A statement dated and signed by the applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the applicant's supervision.

10. Indemnification. An agreement, in a form approved by the city attorney, whereby the applicant: (1) releases the city, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (a) any repeal or amendment of this chapter or any provision of the Planning and Development Code relating to marijuana cultivation, and (b) any arrest or prosecution of the applicant or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies, and holds harmless the city and its

agents, officers, elected officials, and employees from and against any and all claims or actions: (a) brought by adjacent or nearby property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from operations at the cultivation site, and (b) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of marijuana produced at the cultivation site.

B. Every application for a marijuana cultivation permit shall be accompanied by a nonrefundable marijuana cultivation permit program fee.

C. No person shall knowingly make a false statement of fact or knowingly omit any information that is required in an application for a marijuana cultivation permit.

5.150.350 Application process.

The city manager is authorized to establish procedures and guidelines to process marijuana cultivation business permit applications. To ensure that applications for smaller cultivation sites are provided an equal opportunity to be processed as larger sites, the procedures and guidelines may call for a process that considers the canopy size being applied for when determining the order of application processing.

5.150.360 Denial of a marijuana cultivation permit.

A. The city manager may deny a marijuana cultivation permit if the city manager determines that one or more of the following circumstances exist:

1. The application received is incomplete, filed late, or not responsive to the requirements of this article;

2. The application contains a false or misleading statement or omission of a material fact;

3. The operation of a cultivation site described in the application fails to comply with any of the requirements in this code, state law, or any other regulation;

4. The applicant or any of its managers has any unpaid and overdue administrative penalties imposed for violations of this chapter;

5. The applicant has not paid the applicable business operations tax pursuant to chapter 3.08;

6. Within 12 months of the date of application, either the applicant has had its marijuana cultivation permit revoked; or any of its managers were associated with another business that had its marijuana cultivation permit revoked; or

7. Operation of the marijuana cultivation site is a threat to the public health, safety, or welfare.

B. The denial of a marijuana cultivation permit shall comply with article III.

5.150.370 Terms of marijuana cultivation permit; renewal.

A. A marijuana cultivation permit issued pursuant to this article is valid for two years from the date that the permit is issued, unless suspended or revoked sooner.

B. A marijuana cultivation permit is valid for only one cultivation site.

C. Conditions placed on the conditional use permit issued under the Planning and Development Code are also conditions of the cultivation permit. Any violation of the conditional use permit's conditions is grounds for suspending or revoking the cultivation permit.

D. The city manager may impose additional conditions on the cultivation permit, including the maximum square footage of canopy allowed, number and types of equipment (lights, air filters, carbon dioxide generators, etc.) allowed, and security features.

E. To renew a marijuana cultivation permit, the permittee shall submit an application in accordance with section 5.150.340. The permittee shall submit the application no later than 30 days prior to the permit expiration date. Untimely applications are subject to a late penalty in the amount established by resolution of the city council.

5.150.380 Suspending, modifying, or revoking a marijuana cultivation permit.

A. The city manager may suspend, modify, or revoke a marijuana cultivation permit issued pursuant to the provisions of this chapter for any of the following reasons:

1. One or more of the circumstances upon which a marijuana cultivation permit could be denied, as described in section 5.150.330, exists or has occurred;

2. One or more conditions of the marijuana cultivation permit has been violated; or

3. The permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this chapter.

B. The suspension, modification, or revocation of a marijuana cultivation permit shall comply with article III.

5.150.390 Collective or cooperative cultivation.

A. A marijuana cultivation business must operate as a cooperative or collective of four or more members who associate at a particular location to collectively or cooperatively cultivate marijuana, and operate on a not-for-profit basis.

B. Each manager and staff of a marijuana cultivation business must be a member who is registered with that marijuana cultivation business.

5.150.400 Indoor cultivation only.

A. A marijuana cultivation permittee shall only cultivate marijuana in a fully enclosed building.

B. A marijuana cultivation permittee shall not allow marijuana or marijuana products on the cultivation site to be visible from the public right of way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

5.150.410 Interested parties.

A. A marijuana cultivation business shall provide the city with names and addresses of all of the following interested parties:

1. Persons with at least a 10% interest in the marijuana cultivation business;

2. Partners, officers, directors, and stockholders of every corporation, limited liability company, or general or limited partnership that owns at least 10% of the stock, capital, profits, voting rights, or membership interest of the marijuana cultivation business or that is one of the partners in the marijuana cultivation business;

3. The managers of the marijuana cultivation business; and

4. The staff of the marijuana cultivation business.

B. The permittee shall notify the city of any change in the information above within 30 days of the change.

C. All interested parties, as described in subsection A, must submit to fingerprinting and a criminal background check by the city.

D. No person shall be an interested party, as described in subsection A, if he or she is charged with or convicted of a felony; has been charged with or convicted of a violation of California Penal Code section 186.22 (participation in a criminal street gang); or is currently on parole or probation for an offense relating to the sale or distribution of a controlled substance. "Convicted" within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted. "Charged" within the meaning of this section means (1) an indictment was issued by a grand jury, or an information, complaint, or similar pleading was issued by the United States Attorney, district attorney, city attorney, or other governmental official or agency authorized to prosecute crimes, and (2) the criminal proceedings are currently pending.

5.150.420 Emergency contact manager.

A marijuana cultivation permittee shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the marijuana cultivation business.

5.150.430 Community relations manager.

A marijuana cultivation permittee shall provide the city manager with the current name and primary and secondary telephone numbers of at least one manager to communicate with the surrounding neighborhoods and businesses. The marijuana cultivation business shall make good faith efforts to encourage neighborhood residents to call this person to solve problems, if any, before any calls or complaints are made to the city.

5.150.440 Cultivation site buildings.

A cultivation site shall comply with the following requirements:

A. Entrances. All entrances into the buildings on the cultivation site shall be locked at all times with entry controlled by the marijuana cultivation permitee's managers and staff.

B. Main entrance and lobby. The cultivation site shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions.

Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the cultivation areas.

C. Cultivation area. All cultivation areas in any building on the cultivation site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the marijuana cultivation permittee.

D. Transport area. Each building with a cultivation area shall have an area designed for the secure transfer of marijuana from the cultivation area to a vehicle for transportation.

E. Storage area. Each building with a cultivation area shall have adequate storage space for marijuana that has completed the cultivation process or is otherwise not being cultivated. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the marijuana cultivation permittee.

5.150.450 Cultivation site security.

A cultivation site shall comply with the following security requirements:

A. A marijuana cultivation permittee shall comply with the security plan that is approved by the city manager, which plan may include building specifications, lighting, alarms, and state-licensed security personnel.

B. Each security plan approved by the city manager must include the following:

1. Security surveillance cameras. Security surveillance cameras and a video recording system must be installed to monitor all doors into the buildings on the cultivation site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the cultivation site. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.

2. Security video recording and retention. Video from the security surveillance cameras must be recording at all times (24 hours a day, seven days a week) and the recording shall be maintained for at least 30 days. The video recordings shall be made available to the city upon request.

3. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.

C. A marijuana cultivation permittee shall report to the city police department all criminal activity occurring on the cultivation site.

5.150.460 Odor control.

A marijuana cultivation permittee shall prevent all odors generated from the cultivation and storage of marijuana from escaping from the buildings on the cultivation site, such that the odor cannot be detected by a reasonable person of normal sensitivity outside the buildings.

5.150.470 Display of marijuana cultivation permit.

The marijuana cultivation permittee shall display its current valid marijuana cultivation permit issued in accordance with this article inside the lobby or waiting area of the main entrance to the cultivation site. The permit shall be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.

5.150.480 Signs.

A. A marijuana cultivation permittee shall post in the lobby of the cultivation site signs that state the following:

1. "This site is not open to the public."

2. "Retail sales of any goods and services is prohibited."

3. "Juveniles are prohibited from entering this site."

4. "Smoking, ingesting, or consuming marijuana on or within 20 feet of this site is prohibited."

B. Each sign described in subsection A must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.

5.150.490 Cultivation site restricted.

A. No marijuana cultivation permittee shall open their cultivation site to the public.

B. No marijuana cultivation permittee shall allow anyone on the cultivation site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and marijuana transporters.

C. A manager must be on the cultivation site at all times that any other person, except for security guards, is on the site.

D. While on the cultivation site, managers and staff of the marijuana cultivation permittee must wear their marijuana cultivation identification badge, issued by the city, at all times.

E. Any person other than managers or staff who are on the cultivation site must sign in, wear a visitor badge, and be escorted on the site by a manager at all times.

5.150.500 Juveniles prohibited.

A. No juvenile shall be on the cultivation site or operate a marijuana cultivation business in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.

B. No marijuana cultivation permittee shall allow any violation of subsection A.

5.150.510 Retail sales prohibited.

No person shall conduct any retail sales of any good or services on or from a permitted cultivation site.

5.150.520 Marijuana consumption prohibited.

No person shall smoke, ingest, or otherwise consume marijuana in any form on, or within 20 feet of, the cultivation site.

5.150.530 Alcohol prohibited.

No person shall possess, consume, or store any alcoholic beverage on the cultivation site.

5.150.540 Diversion.

No person shall give, sell, distribute, or otherwise transfer any marijuana cultivated on a permitted cultivation site in any manner that violates local or state law.

5.150.550 Maintenance of records.

A. A marijuana cultivation business shall maintain the following records in printed format for at least three years on the cultivation site and shall produce them to the city within 24 hours after receipt of the city's request:

1. The name, address, and telephone numbers of the owner and landlord of the property.

2. The name, date of birth, address, and telephone number of each manager and staff of the marijuana cultivation business; the date each was hired; and the nature of each manager's and staff's participation in the marijuana cultivation business.

3. A written accounting of all income and expenditures of the marijuana cultivation business, including, but not limited to, cash and in-kind transactions.

4. A copy of the marijuana cultivation business' commercial general liability insurance policy and all other insurance policies related to the operation of the business.

5. A copy of the marijuana cultivation business' most recent year's financial statement and tax return.

6. An inventory record documenting the dates and amounts of marijuana received at the cultivation site, the daily amounts of marijuana on the cultivation site, and the daily amounts of marijuana transported from the site.

B. A marijuana cultivation business shall report any loss, damage, or destruction of these records to the city manager within 24 hours of the loss, damage, or destruction.

5.150.560 Site management.

A. The marijuana cultivation permittee shall prevent and eliminate conditions on the cultivation site that constitute a nuisance.

B. The marijuana cultivation permittee shall maintain the exterior of the cultivation site, including any parking lots under the control of the permittee, free of litter, debris, and trash.

C. The permittee shall properly store and dispose of all waste generated on the cultivation site, including chemical and organic waste, in accordance with all applicable laws and regulations.

D. Notwithstanding any provisions of this code to the contrary, the permittee shall remove all graffiti from the cultivation site and parking lots under the control of the permittee within 72 hours of its application.

SECTION 3.

The adoption of this ordinance is not intended to and does not affect any administrative, civil, criminal, or other actions or proceedings brought or to be brought to implement or enforce any provisions of the Sacramento City Code, as they existed prior to the effective date of this ordinance. The provisions of the Sacramento City Code as they exist prior to the effective date of this ordinance shall continue to be operative and effective with regard to any such actions or proceedings.