



**TO:** Mayor and Councilmembers

**FROM:** Michael Jenkins, Interim City Attorney

**CONTACT:** Winnie Cai, Deputy City Attorney

**SUBJECT:** Initiation of Municipal Ordinance to Regulate Marijuana Businesses

**RECOMMENDATION:**

Provide feedback to staff regarding possible regulation of marijuana businesses, including retail sales, manufacturing, and cultivation.

**BACKGROUND:**

The law surrounding marijuana use and business operations has changed dramatically in the last few years. In 2009, the state legalized the medical use of marijuana and allowed marijuana cooperatives to exist as long as they were run by patients and primary caregivers who grew and sold marijuana on a nonprofit status. In 2015, the state passed a new law to allow for the operation of medical marijuana businesses regardless of their profit status, as long as they obtained a license from the state. The most recent state law involves the passage of Proposition 64 or the Control, Regulate and Tax Adult Use of Marijuana Act (commonly known as the Adult Use of Marijuana Act or AUMA). The AUMA legalized recreational marijuana use and personal cultivation. It also allowed for the operation of recreational marijuana businesses, if a state license is obtained.

The City has steadily kept up pace with the passing of regulations, including a ban on medical marijuana dispensaries in 2009, and the allowance for personal cultivation and marijuana deliveries in 2016.

Currently, the City's regulations:

1. Ban medical marijuana businesses;
2. Allow for indoor and outdoor personal cultivation;
3. Ban commercial cultivation and,
4. Allow for deliveries to be made in Goleta, but delivery businesses must not be located in Goleta.

Therefore, the City does not have specific regulations that cover recreational retail sales and recreational manufacturing.

The federal, state, and City law is more comprehensively described in Attachment 1. The legal background is not included in the body of this staff report because a few critical issues need to be decided by Council now that do not involve an in-depth analysis of the law. However, the law will be critical as the City moves forward in the process of determining how to regulate marijuana.

The state can start issuing licenses for medical and recreational businesses on January 1, 2018. However, the state will not issue a license if the local jurisdiction has either banned the business or requires a local license or permit. Like most cities, Goleta will send its regulations and a cover letter explaining the allowed and disallowed uses to the state before January 1, 2018.

Any marijuana regulation would be a zoning ordinance amendment that would need to be reviewed by the Planning Commission as well as adopted by the City Council. Council could choose for this item to also go to the Ordinance Committee. However, since the ordinance would be developed with significant community input and Council involvement, Council could choose to forego the Ordinance Committee in this instance.

## **DISCUSSION**

Staff seeks Council direction on how to address the new operations allowed by the AUMA, which generally include commercial, recreational, retail, cultivation, and manufacturing.

### **Question 1: Should the City ban, allow with new regulations, or not pass any local laws to address the new marijuana operations?**

One major issue for Council is to decide how it wants to address the new marijuana operations (recreational retail sales, cultivation, and manufacturing) that are now allowed by state law and not addressed by the City's current regulations. The City has three choices: (1) ban them, (2) allow them by implementing new regulations, or (3) not address them at all and allow state law to govern.

On August 21, 2017, staff held a community workshop to obtain input in an attempt to inform Council's decision. Because the City has largely banned commercial marijuana operations, there is not a heavy presence of marijuana businesses in the City. There are two legal nonconforming medical marijuana dispensaries, including Grassroots Research at 164 Aero Camino and SB Health Center at 5814 Gaviota Street. In early 2016 in a regular meeting, Council recognized them as businesses that existed before the City's ban on medical marijuana dispensaries and they are allowed to continue to operate.

About 60 people attended the workshop on August 21 and, of those who spoke (15 people), the majority expressed a desire to allow the new businesses, but with control and regulation by the City. There were a few people who advocated for banning the operations. One of the legal nonconforming businesses advocated for allowance with regulation. Some people who wanted to locate their marijuana business in Goleta also advocated for allowance.

Council's first option is to ban the new operations. Some cities in California have intentionally banned new marijuana operations, not because they do not want them to exist in the community, but they are looking to see how these businesses will operate in other cities first. They are taking a "wait and see" approach so that they can learn from other cities and develop a more informed regulation. A consequence of this route would be that businesses hoping to obtain a state license would be prevented from doing so. (The legal nonconforming medical marijuana businesses can still obtain a state license since they are essentially unregulated by the City). Another potential consequence is that, if the City hoped to tax this industry, it would not be able to do so during the time that the ban was in effect. It should be noted that, while there is an opportunity to tax these entities, a tax would need to be placed on the ballot in the next general election in November 2018 and no tax may be imposed until a majority of the electorate has voted for it. Therefore, the earliest the City could see any tax revenue from the operations would be sometime after November 2018. Some cities are banning the operations until the tax has been voted on in November 2018 and they can start collecting revenues before operations begin. If Council wants to take this route, staff would bring back an ordinance to ban all recreational businesses not currently regulated by City laws.

If the City foregoes passing any laws for now, it still has the option to pass laws later. However, if the City chose to require a permit later, it may create some protest from businesses. Compliance with any new permit requirement may be more difficult for the City to obtain once businesses have been allowed to operate without a permit. In addition, if the City had no regulations or a ban in place, businesses could obtain a state license and operate in Goleta. If the City requires a permit for the business after that has occurred, there is no clear path for the City to get the state to revoke the state license if the business does not obtain a City permit. If the City went this direction, the marijuana business would still need to adhere to zoning regulations. For example, a recreational marijuana business could open up in a vacant shop at a local shopping center. For these reasons, staff does not recommend this option.

If Council decides to allow for marijuana operations with regulation, it would open the opportunity for a new industry to exist in the City. The two legal nonconforming businesses would become eligible to expand their operations and new businesses could locate in Goleta.

Under the AUMA and MAUCRSA, the state will impose a 15 percent excise tax on the average market price of retail sales and a cultivation tax of \$9.25/ounce on flowers and \$2.75 per ounce on leaves. Local entities may charge a sales and business license tax on dispensing, cultivation, and manufacturing. The City has an opportunity

to generate a significant amount of revenue from such a tax. Staff has not fully explored all the tax ramifications yet. However, most cities are more focused on developing regulations and figuring out the tax issue later because any tax must be voted in by the electorate at a regular general election, which will next be held in November 2018. As mentioned above, some entities are banning all marijuana operations until a tax can be imposed.

Notwithstanding the tax issue, the marijuana industry is largely uncharted territory in Goleta. Most cities are looking to allow the industry to exist while having regulations in place. A regulatory structure could be set up so that new marijuana businesses would be required to obtain a discretionary permit from the City and the City could impose conditions specific to the business. This is the typical route being considered by most cities in the process of adopting regulations.

If Council decides to go this route, staff will obtain the services of HDL Companies ("HDL"), a consultant who is highly experienced in helping local entities pass marijuana regulations in California, Nevada and Colorado. HDL will be at the September 7<sup>th</sup> meeting to provide a presentation on how they would help the City develop an ordinance and implementation program. It would be important to study and understand how allowing this use could affect communities, neighboring land uses, demand for law enforcement, water, odors, hazards, aesthetics, and the other impacts.

**Question 2: Whether the City wants to have regulations in place by January 1, 2018, when the state begins to process state license applications, or institute a temporary prohibition on marijuana operations so that regulations can be developed over a longer period of time?**

On January 1, 2018, in the absence of local regulation, the state is expected to start issuing licenses to recreational and medical marijuana businesses. If Council wants to have an ordinance in place by this date, based on the process that HDL recommended, the process would flow as follows: (dates are approximate, special Council meetings may be necessary):

1. Council meeting to obtain direction from Council. (Date: 9/7/17)
2. Community Workshop 1: Educate the public about and seek public input on the different marijuana operations (retail, manufacturing, deliveries, and cultivation) and their impacts on the community and best practices to address those impacts. Issues would include environmental impacts, health and safety issues, water, fire hazards, public safety, pedestrian traffic, mold, odors, and criminal activity, etc. (Date: Week of 9/18, Councilmembers are highly encouraged to attend.)
3. Community Workshop 2: Determine where marijuana operations could be located based on the zoning map and decide whether to locate all marijuana operations in one or a few locations ("green zones"). (Date: Week of 9/25/17, Councilmembers are highly encouraged to attend.)

4. Community Workshop 3: Propose major components of an ordinance based on the first two workshops. (Date: Week of 10/2/17, Councilmembers are highly encouraged to attend.)
5. Determination of whether to comply with the California Environmental Quality Act. This will be dependent on the magnitude of allowed uses. (Week of 10/2/17.)
6. Planning Commission for approval of zoning ordinance amendment. (Date: Week of 10/16)
7. Council meetings to review and adopt ordinance. (Dates: 10/17, 11/7 – first reading, and 11/21 – second reading, ordinance effective on 12/21)

Admittedly, this is a very tight timeline. For this reason alone, it might be worthwhile for Council to think about taking a longer period of time to develop the ordinance. In addition, if the magnitude of uses creates impacts that require compliance with CEQA, the January 1, 2018, timeframe will not be met. Without a project description at this point, it is difficult to tell what level of CEQA compliance will be required. The state has released a draft environmental impact report on its cultivation program. Cultivation and manufacturing are the uses that will potentially generate higher environmental review.

Another problem unique to Goleta that poses an obstacle to meeting a January 1, 2018 timeframe is the decision on where (i.e.: in which zone districts) to allow marijuana businesses to operate. This comprises a significant part of the ordinance development. The City could endeavor to identify zones under the City's existing Inland and Coastal Zoning Ordinances within which cultivation, manufacturing, and/or retail sale would be allowed. This approach will prove problematic, however, when the City transitions to the new zoning ordinance. As proposed, the new zoning ordinance will include a new Citywide zoning map that mirrors the land uses of Figure 2-1: Land Use Plan Map (Figure 2-1) of the City's adopted General Plan/Coastal Land Use Plan. This correspondence is necessary because the existing zoning map does not match the land use designation map in the General Plan and state law requires them to be consistent. However, the land use designations in Figure 2-1 do not match up one-to-one with the existing zoning districts within the City. As a result, parcels within a given zone district currently may fall in to several different new zone districts once the new zone ordinance is adopted. For example, the parcels that are now within the C-1 zone district fall within seven different zone districts on the proposed zoning map as part of the new zoning ordinance.

If the City allows marijuana uses under an existing zone district, the City would have two options moving forward. Each present problems. First, if the City wants to ensure that no legal non-conforming uses are created, the City would need to allow those same marijuana uses in any future zoning district to which the existing zone would transition under the new zoning ordinance. This would mean a proliferation of zones where the uses are allowed and those uses may be incompatible with the intent of those zones. Second, the City could identify new zoning districts within which to allow the marijuana uses for the new zoning ordinance. However, this approach means the City would need to go through the exercise of identifying appropriate zone districts for the uses twice. This approach would also create the potential for non-conforming uses if a use that was permitted on a parcel under the current zoning ordinance would not be allowed on that same parcel under the new zoning ordinance.

Another potential option would be to create a set of zoning overlays that identifies acceptable locations for various types of marijuana uses (i.e., one overlay for retail, one for manufacturing, one for cultivation). As a starting point, a map of locations where each type of use is allowed both under the City's existing zoning ordinances and where the use would be allowed in the proposed zoning ordinance could be created. Once those areas are identified, the overlay for that use could be further refined based on public input and Council consideration. One benefit of this approach is the overlay could be used now and once the new zoning ordinance is adopted.

If adopting a new ordinance by January 1, 2018, is not possible or preferable, the Council could impose a temporary ban on new marijuana operations while the City proceeds to develop the new zoning ordinance. Staff could initiate the above-proposed process in parallel using the proposed zone map so that the marijuana ordinance was ready to adopt at the same time as the new zoning ordinance.

**Question 3: If Council decides to regulate the new operations currently not covered by City regulations, does Council want to develop an ordinance to address only those areas not covered by City laws or develop a new ordinance that addresses the new areas and already regulated areas?**

Currently, the City's regulations (see Attachment 1 for more detail):

1. Ban medical marijuana businesses, including retail sales, manufacturing and cultivation;
2. Allow for indoor and outdoor personal cultivation (no distinction between medical or recreational marijuana);
3. Ban commercial cultivation (no distinction between medical or recreational marijuana); and,
4. Allow for deliveries to Goleta, but delivery businesses must not be located in Goleta.

Therefore, what is not covered are recreational retail sales and recreational manufacturing that are allowed under the AUMA. Therefore, the City could purely limit a new ordinance to only cover these two areas. The advantage of this limitation is the ordinance would be simpler.

Another option is for Council to reassess all of its marijuana regulations and develop new laws altogether. The City has regulations essentially banning all medical marijuana businesses. If Council were to allow for recreational marijuana businesses, why would it make sense to not allow medical marijuana businesses? This may not make sense in light of the fact that both recreational and medical marijuana are legal and the state is not treating them differently from a business licensing perspective.

In addition, the City's cultivation allowances are less restrictive than state law. The City allows each resident of a residence to grow 6 mature plants or 12 immature plants and the total square footage allowable in any residence is 100 square feet. How much one

can grow in 100 square feet depends on the type of marijuana species. According to a study conducted by the national nonprofit think tank, RAND, one can grow 140 plants in 100 square feet of area. The AUMA only allows 6 plants per residence. The City could either leave its cultivation ordinance in place or require it to conform with state law.

In addition, the AUMA allows only for indoor cultivation when grown for personal reasons. The City's laws allow for outdoor personal cultivation so long as the cultivation cannot be viewable from the public right-of-way or a neighbor's yard. The City could choose to conform its laws to the state's laws on personal cultivation.

### **FISCAL IMPACTS:**

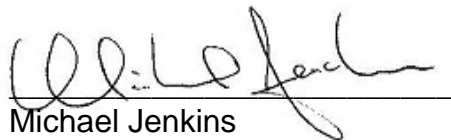
The fiscal impact of Council's direction to ban the new marijuana businesses allowed by state law would be the staff time needed in preparation of an ordinance. The fiscal impact of Council's direction to regulate the new marijuana businesses allowed by the state would be the staff time needed to hold workshops and prepare an ordinance as well as the cost of HDL's services totaling \$29,750 to help the City with the process.

Staff has not yet identified the potential fiscal impacts of regulating the types of marijuana businesses the state will begin permitting in January 2018, such as the revenue from licenses, taxes or fees. Staff and the consultant will identify these impacts once Council has given direction on how to proceed with the regulation of these business.

### **ALTERNATIVES:**


Council's main alternatives to proceed at this point are noted in the body of the staff report.

### **Legal Review By:**



Michael Jenkins  
Interim City Attorney

### **Approved By:**



Michelle Greene  
City Manager

### **Attachments:**

1. Summary of federal, state and local laws.
2. Medical Marijuana Regulation - Coastal Zoning Ordinance section 35-144G; Inland Zoning Ordinance section 35-292i (2009)
3. Cultivation Regulation – Goleta Municipal Code Chapter 8.16
4. Delivery Regulation – Goleta Municipal Code Chapter 5.09

## **Attachment 1**

Summary of federal, state and local laws.



## **Attachment 1 to September 7, 2018 Staff Report**

This is a summary of the federal, state and City law on recreational and medical marijuana use and operations.

### **Federal Law**

Cannabis remains an illegal substance under the Federal Controlled Substances Act (21 USC Section 801 et seq.). Under the Federal Controlled Substances Act, it is unlawful at the Federal level for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense, cannabis. The Federal Controlled Substances Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation, or possession of cannabis for medical purposes. Also at the Federal level, cannabis is classified as a Schedule I Drug, defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. Despite the prohibition, the United States Department of Justice issued a memorandum (the Cole Memo) in August 2013 stating that, notwithstanding the federal classification of marijuana as a Schedule I controlled substance, one can reasonably expect the federal government to stand down and defer to state and local marijuana regulations that are strict and robust. The current and future stance of the federal government regarding cannabis is unclear. President Trump previously expressed support for medical marijuana and states' rights to legalize, but Attorney General Jeff Sessions has expressed the desire to eliminate protections for states' medical marijuana programs and prosecute drug crimes to the fullest extent of the law.

### **State Law**

The following is a summary of the regulation of marijuana in California:

- In 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act ("CUA," Health and Safety Code §11362.5) to allow seriously ill Californians to use, possess, and cultivate marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician. The CUA created defenses to qualified patients and their primary caregivers from statutory criminal prohibitions against possession and cultivation.
- In 2004, the State Legislature enacted SB 420, formally known as the Medical Marijuana Program Act ("MMPA," Health and Safety Code § 11362.7 et seq.) The MMPA clarified the scope of the CUA and provided additional statutory guidance regarding medical marijuana use. The MMPA provided that qualified patients and person with valid identification cards and their designated primary caregivers who cultivate medical marijuana were immunized from statutory criminal sanctions, including sale solely on that basis. The MMPA was interpreted by the courts to mean that dispensaries operated as nonprofit enterprises comprising of a collective of primary caregivers or qualified patients were allowed.

- In 2015, the State adopted the Medical Marijuana Regulation and Safety Act (MMRSA), comprised of California Legislative bills AB 243, AB 266, and SB 643. The MMRSA creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the MMRSA is to ensure uniformity among jurisdictions that allow commercial marijuana operations.
- In June 2016, the Governor signed SB 837, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, amongst other technical changes. SB 837 also adopted regulations related to the use and diversion of water in connection with the cultivation of cannabis. This new law also changed the name of MMRSA to the Medical Cannabis Regulation and Safety Act (MCRSA).
  - On November 8, 2016, California voters passed Proposition 64 or the AUMA. Proposition 64 legalized the nonmedical use of cannabis by persons 21 years of age and over, and the cultivation of not more than six (6) living cannabis plants for personal use, subject to reasonable regulations adopted by local jurisdictions. AUMA also created a state regulatory and licensing framework governing the commercial cultivation, manufacture, testing and distribution of nonmedical cannabis.
  - The AUMA left California with two separate licensing and regulatory schemes for medical and adult (or recreational) use of cannabis). In June 2017, the Governor signed AB 64, a “Trailer Bill” to consolidate the provisions providing for the licensure and regulation of commercial medicinal cannabis activity and commercial adult-use cannabis activity under a single regulatory scheme, which would be known as the Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA), repealing MMRSA, and incorporating certain provisions of MMRSA into the licensing provisions of AUMA. Essentially, the trailer bill is intended to create one regulatory structure for medical and nonmedical cannabis use and commercial cannabis activities. Some notable parts of the trailer bill are that it reiterates local authority to regulate or ban these activities, explains that cannabis activities must comply with current building and fire safety standards (including any local amendments to the building code that cities adopt based on climatic, geologic or topographic conditions), and creates a more streamlined system for state licensing agencies to work with local governments to ensure that licensees are operating in compliance with local laws. One important difference that remains between the medical and recreational cannabis activities is that recreational cannabis can only be sold to and consumed by adults over 21 years of age. The medical cannabis program allows patients over 18 years of age to buy and use cannabis.
  - The licensing regulations for all of the various cannabis activities authorized under the MAUCRSA are still being developed by the state and will be adopted through emergency rulemaking processes later this year. The draft licensing regulations are expected to be released in September for a very short comment period (due to the emergency rule making process).

## **Details of the Recreational Cannabis Program**

- The AUMA legalizes marijuana for those persons over 21 years old, to protect children, and to establish laws to regulate marijuana cultivation, manufacturing, testing, retail sale, distribution, and microbusiness<sup>1</sup>. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry in California.
  - The AUMA and MAUCRSA consolidate and streamline regulation and taxation for both nonmedical and medical marijuana by taxing both the growth and sale of marijuana to potentially generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on driving under the influence (DUI) enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.
- By legalizing adult use of marijuana, the AUMA aims to undermine the black market for marijuana, and place marijuana purchases into a legal structure with strict safeguards against children accessing it. The AUMA prohibits the sale of nonmedical marijuana to those persons under 21 years old, and provides new resources to educate youth against drug abuse and train local law enforcement to enforce the new law. It bars marijuana businesses from being located within 600 feet of schools, playgrounds, and other areas where children congregate. It establishes mandatory and strict packaging and labeling requirements for marijuana and marijuana products.
- The AUMA establishes a comprehensive system governing marijuana businesses at the state level and safeguards local control, allowing local governments to regulate marijuana-related activities and businesses through zoning and permitting requirements, and to ban marijuana businesses by a vote of the people within a locality.
- The AUMA creates a comprehensive regulatory structure in which every marijuana business is overseen by a specialized state agency known as the Bureau of Marijuana Control, housed in the California Department of Consumer Affairs. The Department of Consumer Affairs is responsible for licensing and overseeing marijuana retailers, distributors, and microbusinesses. The Department of Food and Agriculture will license and oversee marijuana cultivation, ensuring it is environmentally safe. The Department of Public Health will license and oversee manufacturing and testing, ensuring consumers receive a safe product. The State Board of Equalization will collect the special marijuana taxes, and the State Controller will allocate the revenue to administer the new law and provide the funds to critical investments.

The allowances and prohibitions on personal use in the AUMA are as follows:

### Personal Use Allowances

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<sup>1</sup> A microbusiness is for small retailers with farms not exceeding 10,000 square feet. State law allows them to cultivate, distribute and sell but requires testing to be done by an independent outside entity.

- Age – 21 and older
- May possess, process, transport, purchase, obtain, or give away 28.5 grams (approximately 1 ounce or the size of a sandwich baggie) of non-concentrated non-medical marijuana, or 8 grams (about 0.25 ounce or 0.5 tablespoon) of concentrated marijuana products
- May smoke or ingest marijuana or marijuana products
- May possess plant, cultivate harvest, dry, or process up to 6 plants per residence for personal use

#### Restrictions on Personal Use

- No smoking in a public place (except where authorized locally)
- No smoking where smoking tobacco is prohibited
- No smoking within 1,000 feet of a school, day care center, or youth center
- No smoking while driving or riding in a vehicle
- Cities may prohibit smoking and possession in buildings owned, leased or occupied by the city
- Employers may maintain drug-free workplaces

The main regulatory components of the AUMA and now the MAUCRSA are summarized below:

State and Local Licensing. A state license is required to engage in commercial marijuana activity (both medical and recreational). State licensing authorities are required to begin issuing licenses by January 1, 2018. Therefore, the AUMA provisions legalizing commercial cannabis activity will not become operational until the state begins issuing licenses, which will likely occur in early 2018. The AUMA and MAUCRSA do not prevent cities from adopting and enforcing local ordinances regulating or completely prohibiting commercial cannabis activity including deliveries. As explained in greater detail below, the AUMA allows cities to only “reasonably regulate” but not prohibit personal cultivation of up to six marijuana plants within a person’s private residence. The AUMA allows cities to prohibit all outdoor cultivation whether for personal or commercial purposes.

The AUMA prohibits state licensing authorities from issuing a license to a commercial nonmedical marijuana business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. This means that a city wishing to adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses must adopt an ordinance prior to the date the state begins issuing licenses. However, a city may adopt an ordinance banning or regulating personal outdoor cultivation of nonmedical marijuana at any time.

If a city does not adopt an ordinance expressly banning or regulating nonmedical marijuana businesses before the state begins issuing state licenses, there is a risk that the state could issue a license to the business without the benefit of local input. As noted above, the MAUCRSA has attempted to improve collaboration between state and local agencies to ensure that licensed operators are operating responsibly and in accordance with both state and local law. The state licensing regulations are

still being drafted and have not been released to the public. It is unclear at this time whether the state will require some proof of compliance with local laws before issuing a state license. Nevertheless, the best approach to prevent issuance of state licenses in violation of local law is to have an ordinance adopted before January 1, 2018 and send a copy of that ordinance to the state licensing agencies. Cities may adopt an ordinance expressly banning or regulating such operations after the state begins to issue licenses, but it will be difficult to terminate the state licensee's operations until the state license is up for its yearly renewal. Therefore, the best approach is to adopt a local ordinance before the state begins issuing state licenses.

**Marijuana Cultivation.** Under AUMA and as of November 9, 2016, individuals 21 years and older can cultivate marijuana plants inside a private residence for personal use. The AUMA allows local governments to reasonably regulate, but not ban, the personal cultivation of up to six nonmedicinal marijuana plants inside a private residence. A "residence" is defined as a house, an apartment unit, a mobile home, or similar dwelling. This includes cultivation in a greenhouse that is on the property of the residence, but not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space. Since this activity does not require a state license, individuals are currently allowed to engage in personal use. Please note that a private property owner can ban or restrict the cultivation/smoking of marijuana on their property. A state or local agency may also prohibit or restrict such activities on property owned, leased, or occupied by the state or local government.

Local governments may regulate or ban all personal and commercial outdoor cultivation.<sup>2</sup> A local government cannot prohibit personal indoor cultivation of marijuana in all leased or multi-unit residences within the city. Landlords can prohibit indoor cultivation and the City could require proof of permission from the lessor before issuing a permit for indoor personal cultivation. Again, the regulations on indoor residential cultivation must be reasonable.

In accordance with the AUMA, if a city bans commercial cultivation, or personal outdoor cultivation, or retail sales of marijuana or marijuana products, it is ineligible to receive state grant monies funded through the new state excise taxes that take effect on January 1, 2018. These funds could be used by local governments for law enforcement, fire protection, or other local programs related to the AUMA.

**Adult Marijuana Usage.** Under the AUMA, a person 21 years of age or older may possess, process, transport, purchase or give away to persons 21 years of age or older not more than 28.5 grams of marijuana in a non-concentrated form and not more than 8 grams of marijuana in a concentrated form including marijuana products. These activities will be lawful under state law and cannot be prohibited under local law.

**Transport of Marijuana.** The AUMA allows cities to ban deliveries within their territorial limits. However, cities cannot prevent the use of public roads for the delivery of

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<sup>2</sup> The AUMA includes language that any ordinance that bans personal outdoor cultivation could be repealed upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.

marijuana. For example, if a licensed delivery company located in City A must travel on public roads through City B to make an authorized delivery in City C, City B cannot prohibit the licensed delivery company from travelling on public roads in City B to get to City C. In addition, cities may not prevent the use of public roads within its jurisdiction to transport nonmedical marijuana.

**Marijuana Tax.** All taxes are either property or excise taxes. A property tax is triggered by the ownership of private property and an excise tax is based on the privilege of using or doing something with property (i.e. business license tax, transient occupancy tax, etc.) The AUMA imposed a state excise tax on the purchase and cultivation of marijuana (15% on the gross receipt of retail sale and a cultivation tax based on the weight of flowers and leaves produced). State and local sales taxes also apply to the sale of cannabis, except that medical marijuana is exempt from state and local sales taxes. The rationale is that marijuana consumed for truly medical purposes is no different from conventional pharmaceuticals, which are also exempt from federal, state, and local sales tax. However, other forms of excise tax may be levied on all marijuana, whether medical or recreational. For example, a cultivation tax, a manufacturing tax, or the most common, a business license tax, may still be levied at the local level on any commercial marijuana activity.

## City Regulations

Generally, the City currently prohibits medical marijuana activities, allows for personal cultivation, and allows for deliveries to end but not begin in the City.

	<b>Allowed/Not Allowed</b>	<b>Code</b>
<b>Medical Marijuana</b>		
Retail Sales	Not allowed except for 2 grandfathered dispensaries	Coastal Zoning Ordinance section 35-144G; Inland Zoning Ordinance section 35-292i (2009)
Cultivation	Not allowed except for 2 grandfathered dispensaries	Coastal Zoning Ordinance section 35-144G; Inland Zoning Ordinance section 35-292i (2009)
Deliveries	Deliveries into the City allowed if delivery business is located in another jurisdiction; No delivery businesses are allowed to be located in the City except for the 2 grandfathered businesses	Coastal Zoning Ordinance section 35-144 G; Inland Zoning Ordinance section 35-292i (2009); Goleta Municipal Code Chapter 5.09

Manufacture, extraction, testing or processing	Not allowed except for 2 grandfathered dispensaries	Coastal Zoning Ordinance section 35-144 G; Inland Zoning Ordinance section 35-292i
Transport within City roads	Allowed	Allowed by state law; Cities cannot ban
<b>Recreational Marijuana - Council Direction Needed</b>	<b>Allowed/Not Allowed</b>	<b>Code</b>
Retail sales	Need Council direction	Should we allow for retail sales?
Cultivation	Yes for personal cultivation; No for commercial cultivation	GMC Chapter 8.16
Deliveries	Yes to deliveries ending in Goleta;  Need Council direction on whether delivery businesses can be located in Goleta	Should we allow for delivery businesses to be located in Goleta
Manufacture, (warehousing, extraction, testing, and processing)	Need Council direction	Should we allow for these activities in the City?
Transport within City roads	Preempted by state law	Allowed by state law; Cities cannot ban

### **Medical Marijuana (Coastal Zoning Ordinance section 35-144 G; Inland Zoning Ordinance section 35-292i of the Inland Zoning)**

In 2009, the City Council passed a zoning ordinance amendment that prohibits commercial medical marijuana businesses except for the use and possession by qualified patients and their primary caregivers and two medical marijuana dispensaries that existed before 2009. (Resolution 09-08, codified at Coastal Zoning Ordinance section 35-144G and Inland Zoning Ordinance section 35-292i.) The two grandfathered

dispensaries are Grassroots Research at 164 Aero Camino and SB Health Center at 5814 Gaviota Street.

Under this ordinance, a “dispensary” is defined as “any site, facility, location, use, cooperative or business, whether for profit or non-profit, whether permanent or mobile, which to any extent distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients’ primary caregivers, or physicians pursuant to Proposition 215, Health & Safety Code 11362.5 et seq. or any state regulations adopted in furtherance thereof.” In essence, no sale, delivery, processing, or cultivation of medical marijuana may occur in the City except at the two locations that have been grandfathered and qualified patients and their primary caregivers may cultivate and use medical marijuana.

These City regulations are not affected by the AUMA.

### **Recreational marijuana (Goleta Municipal Code Chapter 8.16)**

As discussed above, the AUMA created the right of recreational marijuana businesses to cultivate, sell, delivery, and manufacture.

In terms of cultivation, the City currently allows only for personal cultivation and not commercial cultivation. This addresses the new commercial recreational marijuana cultivation allowed by the AUMA – the City’s regulations ban it. In addition, residents in Goleta may cultivate up to 6 mature or 12 immature plants per resident in each residential unit. This is different than the AUMA in that a maximum of 6 plants per residence is allowed to be cultivated indoors. However, our current code limits the aggregate growing space to 100 square feet. Also, the AUMA only allows for indoor personal cultivation and not outdoor personal cultivation. The City’s regulations allow for both indoor and outdoor cultivation.

In terms of delivery, GMC Chapter 5.09 currently allows delivery of marijuana into the City by delivery businesses located outside the City if they obtain a license for the businesses and another license for every driver making deliveries for the business. The annual license fee is \$125 for each marijuana business and \$125 for each delivery driver. The drivers must pass certain a background check done by the Sheriff’s Office.

GMC Chapter 5.09 does not specify which type of marijuana, medical or recreational, is allowed to occur in Goleta. Since no recreational marijuana business can legally operate until it obtains a state license in 2018, Chapter 5.09 currently only applies to medical marijuana delivery businesses since the City’s rules only regulate medical marijuana at this point. Furthermore, because Council banned medical marijuana dispensaries, which includes the right to deliver, from the City, Chapter 5.09 has to be interpreted to mean that only deliveries ending in the City is allowed. In other words, no delivery business could be located in the City. Only delivery businesses located outside of the City can make deliveries in the City.



Since the AUMA creates the right of deliveries of recreational marijuana, the City lacks regulations to deal with this area.

The manufacture of recreational marijuana products is allowed under the AUMA. No current City laws address recreational manufacturing.

**Attachment 2**

Medical Marijuana Regulation - Coastal Zoning Ordinance section 35-144G; Inland  
Zoning Ordinance section 35-292i (2009)

**Sec. 35-292i. Medical Marijuana Dispensaries.**

*(Added by City Ord. 09-08, 6/16/09)*

**Sec. 35-292i.1. Purpose and Intent.**

The purpose of this ordinance is to prohibit the establishment and operation of any new medical marijuana dispensary within the City limits of the City of Goleta.

**Sec. 35-292i.2. Applicability.**

The provisions of this Section shall apply to any site, facility, location, use, cooperative or business, whether for profit or non-profit, whether permanent or mobile, which to any extent distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians pursuant to Proposition 215, Health & Safety Code § 11362.5 *et seq.* or any State regulations adopted in furtherance thereof.

This Section shall not prohibit the use or possession of quantities of marijuana by a qualified patient for personal use. This Section shall not prohibit the possession of quantities of marijuana by a primary caregiver for personal use of qualified patients of such primary caregiver.

**Sec. 35-292i.3. Prohibitions and Exceptions.**

- A. It shall be unlawful to establish, operate or maintain, or to participate in the establishment, operation or maintenance of a medical marijuana dispensary anywhere within the City limits of the City of Goleta.
- B. In accordance with the authority granted the City of Goleta under Government Code Section 65858(b), and pursuant to the findings stated herein, from and after the date of adoption of this ordinance, no use permit, variance, zoning clearance, business license or other applicable entitlement shall be accepted, approved or issued for the establishment or operation of a medical marijuana dispensary.
- C. Medical marijuana dispensaries shall not be permitted as a component or exclusive use under the definition of a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a healthcare facility or facility licensed pursuant to Chapter 2 of Division 2 of the 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 Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice, or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**GEN. REGS.**  
**Medical Marijuana Dispensaries**

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*Sec. 35-292i.4. Penalties.*

Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in the County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

**Sec. 35-144G. Medical Marijuana Dispensaries.**

*(Added by City Ord. 09-08, 6/16/09)*

**Sec. 35-144G.1. Purpose and Intent.**

The purpose of this ordinance is to prohibit the establishment and operation of any new medical marijuana dispensary within the City limits of the City of Goleta.

**Sec. 35-144G.2. Applicability.**

The provisions of this Section shall apply to any site, facility, location, use, cooperative or business, whether for profit or non-profit, whether permanent or mobile, which to any extent distributes, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians pursuant to Proposition 215, Health & Safety Code § 11362.5 *et seq.* or any State regulations adopted in furtherance thereof.

This Section shall not prohibit the use or possession of quantities of marijuana by a qualified patient for personal use. This Section shall not prohibit the possession of quantities of marijuana by a primary caregiver for personal use of qualified patients of such primary caregiver.

**Sec. 35-144G.3. Prohibitions and Exceptions.**

- A. It shall be unlawful to establish, operate or maintain, or to participate in the establishment, operation or maintenance of a medical marijuana dispensary anywhere within the City limits of the City of Goleta.
- B. In accordance with the authority granted the City of Goleta under Government Code Section 65858(b), and pursuant to the findings stated herein, from and after the date of adoption of this ordinance, no use permit, variance, zoning clearance, business license or other applicable entitlement shall be accepted, approved or issued for the establishment or operation of a medical marijuana dispensary.
- C. Medical marijuana dispensaries shall not be permitted as a component or exclusive use under the definition of a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a healthcare facility or facility licensed pursuant to Chapter 2 of Division 2 of the 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 Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice, or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**GEN. REGS.**  
**Medical Marijuana Dispensaries**

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*Sec. 35-144G.4. Penalties.*

Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in the County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

### **Attachment 3**

Cultivation Regulation – Goleta Municipal Code Chapter 8.16

## Goleta Municipal Code

## Title 8 HEALTH AND SAFETY

**Chapter 8.16 MARIJUANA CULTIVATION REGULATIONS****8.16.010 Definitions.**

For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

City. The City of Goleta.

Concentrated Cannabis. "Concentrated cannabis" means the separated resin, whether crude or purified, obtained from marijuana.

Cultivation. "Cultivation" shall have the same meaning set forth in California Business and Professions Code Section 19300.5, as that section now appears or may hereafter be amended or renumbered.

Location of Cultivation. "Location of cultivation" means the real property parcel where marijuana is cultivated.

Marijuana. "Marijuana" shall have the same meaning as provided in California Health and Safety Code Section 11018, as that section now appears or may hereafter be amended or renumbered. Marijuana also means all parts of the plant *Cannabis sativa* linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. Marijuana does not mean the separated resin, whether crude or purified, obtained from marijuana.

Person. "Person" includes any person, firm, association, organization, partnership, joint venture, business trust, corporation or company.

Primary Caregiver. "Primary caregiver" shall have the meaning set forth in California Health and Safety Code Section 11362.7, as that section now appears or may hereafter be amended or renumbered.

Qualified Patient. "Qualified patient" shall have the meaning set forth in California Health and Safety Code Section 11362.7, as that section now appears or may hereafter be amended or renumbered. (Ord. 16-01 § 3)

**8.16.100 Marijuana Cultivation Restrictions—Exemption.**

A. To the extent a primary caregiver engaged in the cultivation of marijuana for the use by a qualified patient for which they are the primary caregiver is exempt from the regulations in this chapter.

B. To the extent a qualified patient is engaged in the cultivation of marijuana for their own personal use is exempt from the regulations of this chapter.

C. To the extent a marijuana dispensary is operated consistent with Goleta Ordinance No. 09-08, the marijuana dispensary is exempt from the following provisions of this chapter:

1. Section 8.16.120(A).
2. Section 8.16.120(B).
3. Section 8.16.120(C).
4. Section 8.16.120(D).
5. Section 8.16.120(I).
6. Section 8.16.120(J). (Ord. 16-01 § 3)

**8.16.110 Marijuana—Persons Responsible.**

A person who owns a location of cultivation is deemed responsible for allowing the cultivation of marijuana at the location. Every person age 18 or older who resides at a location of cultivation is deemed responsible for allowing the cultivation of marijuana at the location. (Ord. 16-01 § 3)



#### **8.16.120 Marijuana Cultivation—Restrictions.**

A. It is unlawful for any person to cultivate marijuana or allow the cultivation of marijuana for the purposes of sale, use or distribution to any person not residing at the location of cultivation.

B. It is unlawful for any person to cultivate or allow to be cultivated more than six mature or 12 immature marijuana plants for each adult resident of the location of cultivation.

C. It is unlawful for any person to cultivate marijuana or allow to be cultivated marijuana plants in an aggregate area of more than 100 square feet at any location of cultivation.

D. It is unlawful for any person to cultivate marijuana or allow marijuana to be cultivated at any location of cultivation which is not the primary residence of such person.

E. It is unlawful for any person to cultivate marijuana or allow marijuana to be cultivated at any location of cultivation which is not either owned by such person or leased to such person through a written lease which expressly allows cultivation of marijuana at the location.

F. It is unlawful for any person to cultivate marijuana or allow marijuana to be cultivated in a manner whereby marijuana is visible from the public right-of-way or publicly traveled privately maintained roads.

G. It is unlawful for any person to cultivate marijuana or allow marijuana to be cultivated in any area that is not secure within a structure or within an outdoor area secured by a fence completely encompassing the area where marijuana is cultivated.

H. It is unlawful for any person to cultivate marijuana or allow marijuana to be cultivated in a manner that interferes with the quiet enjoyment of two or more properties.

I. It is unlawful for any person engaged in the cultivation of marijuana to create, produce, process, or possess any concentrated cannabis.

J. It is unlawful for any person engaged in the cultivation of marijuana to possess more than eight ounces of dried marijuana.

K. It is unlawful for any person who is required to register as a sex offender under the provisions of Section 290 of the California Penal Code to cultivate marijuana.

L. It is unlawful for any person who has been convicted of any misdemeanor or felony offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs to cultivate marijuana.

M. It is unlawful for any person who has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while intoxicated; or reckless driving involving bodily injury, to cultivate marijuana for a period of three years following the conclusion of such suspension, revocation or probation.

N. It is unlawful for any person who has been convicted of any offense punishable as a felony, or has been convicted within a 10-year period immediately preceding the crime of theft in either degree to cultivate marijuana. Conviction includes a plea of guilty, a plea of no contest or a verdict of guilty.

O. It is unlawful for any person who has been found to have violated any provision of this chapter to cultivate marijuana.  
(Ord. 16-01 § 3)

#### **Attachment 4**

Delivery Regulation – Goleta Municipal Code Chapter 5.09

## Goleta Municipal Code

### Title 5 BUSINESS LICENSES AND REGULATIONS

#### Chapter 5.09 MARIJUANA DELIVERY REGULATIONS

##### Article I. Marijuana Delivery Service License

###### 5.09.010 Definitions.

For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

City. The City of Goleta.

City Manager. The City Manager of the City of Goleta or designee.

Marijuana. "Marijuana" shall have the same meaning as provided in California Health and Safety Code Section 11018, as that section now appears or may hereafter be amended or renumbered. Marijuana also means all parts of the plant *Cannabis sativa* linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Marijuana also means the separated resin, whether crude or purified, obtained from marijuana.

Marijuana Delivery. The commercial transfer of marijuana from one location to another.

Marijuana Delivery Driver. Any individual who drives or operates a marijuana delivery vehicle in which marijuana is delivered.

Marijuana Delivery Service. A person engaged in the business of owning, controlling or operating one or more marijuana delivery vehicles which transport, carry, or deliver marijuana in such marijuana delivery vehicle, or marijuana delivery vehicles, anywhere within the City of Goleta.

Marijuana Delivery Vehicle. A motor vehicle, as that term is defined in the Vehicle Code of the State of California, used for the transportation of marijuana.

Person. "Person" includes any person, firm, association, organization, partnership, joint venture, business trust, corporation or company.

Primary Caregiver. "Primary caregiver" shall have the meaning set forth in California Health and Safety Code Section 11362.7, as that section now appears or may hereafter be amended or renumbered.

Qualified Patient. "Qualified patient" shall have the meaning set forth in California Health and Safety Code Section 11362.7, as that section now appears or may hereafter be amended or renumbered. (Ord. 16-02 § 3)

###### 5.09.020 Marijuana Delivery Service License—Required.

Every marijuana delivery service shall obtain a marijuana delivery service license from the City prior to any operation within the City. (Ord. 16-02 § 3)

###### 5.09.030 Marijuana Delivery Service License—Exemption.

A. A primary caregiver engaged in the delivery of marijuana to a qualified patient for which they are the primary caregiver is exempt from a requirement for a marijuana delivery service license.

B. A qualified patient engaged in the transportation of marijuana for their own personal use is exempt from a requirement for a marijuana delivery service license. (Ord. 16-02 § 3)

###### 5.09.040 Fees and Term.

A. Fees. Every marijuana delivery service shall first apply for a marijuana delivery service license, and pay a license fee as stated in the City's Fee Schedule. Upon approval of the marijuana delivery service license application, the marijuana delivery service shall pay the fee as stated in the City's Fee Schedule per marijuana delivery vehicle, and the City shall issue a marijuana

delivery vehicle license sticker for each properly insured marijuana delivery vehicle. The annual marijuana delivery service license renewal fee shall be as stated in the City's Fee Schedule per year, and the fee per marijuana delivery vehicle for the license sticker as stated in the City's Fee Schedule. Each applicant shall also present to the City the prescribed amount set by the Department of Justice of the State of California for the processing of the applicant's fingerprints. None of the above fees shall be prorated, or refunded.

B. Term. All licenses and stickers issued to marijuana delivery services shall be for the period of one calendar year, and shall expire at midnight on the 31st day of December. (Ord. 16-02 § 3)

#### **5.09.050 Application.**

- A. Every application for a marijuana delivery service license shall be signed by the applicant and shall contain:
1. Name and address of the applicant.
  2. If the applicant is a corporation, the names and addresses of its directors.
  3. Area within which applicant proposes to operate.
  4. Kind and amount of public liability and property damage insurance covering each vehicle to be used for the acceptance of passengers for hire within the City.
  5. Owner's trade name and business address.
  6. Listing of all vehicles to be used for marijuana delivery within the City, their make, model (year), license plate number and Vehicle Identification Number.
- B. Whenever an employee of a marijuana delivery service files an application for a marijuana delivery driver's license, or renewal hereof, with the City, the employer marijuana delivery service shall within 10 days after the filing of the application by the employee with the City, submit to the City by first class U.S. mail copies of the results and other records pertaining to the testing of the employee for the use of alcohol and controlled substances conducted pursuant to mandatory controlled substance and alcohol testing certification program required by Section 5.09.590. (Ord. 16-02 § 3)

#### **5.09.060 Investigation of Application—Disapproval and Notification.**

- A. The application shall be referred to the Police Chief for approval. The Police Chief shall obtain a copy of the applicant's criminal record in the United States, if any, and may obtain the criminal record, if any, in any other country, if obtaining such foreign criminal record is feasible.
- B. The Police Chief in making the determination may also demand personal references from applicant and may make such further investigation of applicant as deemed appropriate.
- C. If the Police Chief disapproves the application, he or she shall notify the City Manager in writing giving the reasons for the disapproval. The City Manager shall thereupon notify the applicant in writing by mailing or delivering a copy of the Police Chief's disapproval, including the reasons therefor, to the applicant and advise him or her of the right to appeal the disapproval within 15 days of such notice. No license shall be issued unless a successful appeal of the disapproval is made. (Ord. 16-02 § 3)

#### **5.09.070 Appeal of Disapproval.**

Within 15 days after notification of disapproval, an applicant may appeal to the City Manager, in writing, from the disapproval of the Police Chief, giving the reasons in full as to why the license should be issued in spite of the disapproval. A copy of the appeal shall be sent by applicant to the Police Chief and City Manager at the same time. (Ord. 16-02 § 3)

#### **5.09.080 Appeal of Disapproval—Setting Hearing.**

The City Clerk shall set a hearing on the appeal of the applicant, and shall fix a time and a date certain, within 30 days after the receipt of applicant's appeal by the City (or such longer time as applicant shall agree to) to hear and consider the appeal of applicant. The City Clerk shall notify the applicant, Police Chief and City Manager of the time and place of hearing at least seven days prior to the date of the hearing. (Ord. 16-02 § 3)

#### **5.09.090 Conduct of Hearing.**

A. The City Manager shall hear the appeal.

B. All testimony at the hearing shall be given under oath or affirmation. The applicant and Police Chief shall have the right to be represented by counsel. Applicant and Chief shall each have the right to call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely on in making decisions.

C. The City Manager shall determine the order of procedure and shall rule on all objections to admissibility of evidence. Applicant and Police Chief shall each be given a full and fair hearing. The City Manager shall issue a written decision at a date not more than 10 days after the close of the hearing. The decision of the City Manager shall be final. (Ord. 16-02 § 3)

#### **5.09.100 Grounds for Denial, Revocation or Suspension.**

The granting of a marijuana delivery service license or a renewal thereof may be denied and an existing license may be revoked or suspended if the license holder or applicant:

A. Has knowingly made a false statement in a material matter either in his or her application or in any reports or other documents furnished by him or her to the City.

B. Does not maintain and operate his or her marijuana delivery vehicle and other equipment in the manner and in the condition required by law and applicable regulations.

C. Is required to register as a sex offender under the provisions of Section 290 of the California Penal Code.

D. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.

E. Within the three-year period immediately preceding the application has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while intoxicated; or reckless driving involving bodily injury.

F. Has been convicted of any offense punishable as a felony, or has been convicted within a 10-year period immediately preceding the crime of theft in either degree.

G. Has been convicted of any offense involving moral turpitude.

H. Has been involved within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury.

I. Has been involved in three or more motor vehicle accidents within the year immediately preceding the application.

J. Failed to pay required license fees.

K. Has violated any provision of this chapter. (Ord. 16-02 § 3)

#### **5.09.110 Insurance Requirements.**

The insurance required before a marijuana delivery service license can be issued shall insure the public against any loss or damage that may result to any person or property from the operation of any marijuana delivery vehicle used by the marijuana delivery service in its business as such. The amount of insurance shall not be less than \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage. The City, its officers, agents and employees shall be named as additional insureds on any policy. Insurance shall include contractual liability to cover liability assumed in contract, shall include a severability of interest or equivalent wording, and shall specify that insurance coverage afforded to the City shall be primary. (Ord. 16-02 § 3)

#### **5.09.120 Insurance Certificate Prerequisite to Issuance.**

No marijuana delivery service license shall be issued until the applicant first files with the City a certificate of insurance, on a form acceptable by the City. Said certificate shall provide evidence of insurance in amounts and with conditions acceptable to the City and shall be approved by the City Manager. The marijuana delivery service insurance shall remain in force during the entire term of the license, and if such insurance is canceled or terminated, it shall be grounds for revocation or suspension of the license until a valid certificate is furnished to the City. (Ord. 16-02 § 3)

#### **5.09.130 Hold Harmless Agreement.**

Each marijuana delivery service shall, and by acceptance of the license, does agree to hereby indemnify and hold harmless the City, its officers, agents and employees from any and all damages, claims, liabilities, costs including attorney's fees, suits or other expenses resulting from and arising out of said marijuana delivery service operations. (Ord. 16-02 § 3)

#### **5.09.140 Revocation.**

A. The City may give notice to a marijuana delivery service of its intention to revoke a marijuana delivery service license. If deemed it will be a hazard to the health, safety or welfare, for the marijuana delivery service to continue operations pending a revocation hearing, the City may suspend the license and all rights and privileges thereunder until the hearing on revocation. The notice shall specify a time and place at which a hearing will be held before the City Manager. The hearing shall be conducted not less than seven days after the date of the notice, unless the operator agrees to a shorter period of time. Unless the marijuana delivery service consents, a hearing must be held within 14 days of a suspension. The notice shall specify the reasons for the proposed revocation in sufficient detail so as to fully inform the marijuana delivery service of the reasons which have caused the notice to be given, and if the marijuana delivery service license has been suspended the reasons for such suspension. A copy of the notice shall be sent to the Police Chief.

B. The marijuana delivery service and Police Chief shall each have the right to be represented by counsel, to call and examine witnesses, cross-examine witnesses, and argue their respective positions. The proceedings shall be informal, and strict rules of evidence shall not apply. All evidence shall be admissible which is of the kind that reasonably prudent persons rely on in making decisions.

C. The City Manager shall render a decision in writing, and include the reasons therefor. The decision of the City Manager shall be final. (Ord. 16-02 § 3)

#### **5.09.150 Marijuana Delivery Service Duties.**

A. Each marijuana delivery service shall comply with all local, State and Federal laws.

B. No marijuana delivery service shall permit any person other than a marijuana delivery vehicle driver, licensed in accordance with Article II of this chapter, to operate any of its marijuana delivery vehicles in which marijuana is delivered within the City.

C. Each marijuana delivery service shall maintain a written record of every request for delivery, including the name of the requestor, the address for the delivery, the quantity and type of marijuana requested, the date and time the delivery request is received, the marijuana delivery vehicle that is assigned to make the delivery, and the marijuana delivery driver that is assigned to make the delivery.

D. Each marijuana delivery service shall assure that every marijuana delivery driver shall have a copy of the record of the delivery request during the delivery of any marijuana in the City.

E. Each marijuana delivery service shall assure that no concentrated cannabis is transported by any marijuana delivery vehicle or marijuana delivery driver.

F. Each marijuana delivery service shall assure that no more than 28.5 grams of marijuana is transported by any marijuana delivery vehicle or marijuana delivery driver at any point in time.

G. Each marijuana delivery service shall maintain, for a minimum of three years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements, (including any in-kind contributions) as well as records of all operational expenditures and costs incurred by the marijuana delivery service in accordance with generally accepted accounting practices and standards typically applicable to business records.

H. Each marijuana delivery service shall pay any applicable sales tax pursuant to Federal, State and local law. The location where marijuana is delivered to shall be established as the "point of sale" within the City for sales tax purposes.

I. Each marijuana delivery service shall keep current the information furnished under Section 5.09.050. The information shall be furnished to the City. (Ord. 16-02 § 3)

### **Article II. Marijuana Delivery Driver's License**

#### **5.09.510 Marijuana Delivery Driver's License—Required.**

Every marijuana delivery driver who drives a marijuana delivery vehicle for which a marijuana delivery service license is required or has been issued shall obtain a marijuana delivery driver's license from the City prior to driving a marijuana delivery vehicle within the City. (Ord. 16-02 § 3)

#### **5.09.520 Application.**

A. Every marijuana delivery driver shall file an application for a marijuana delivery driver's license on a form supplied by the City.

B. For marijuana delivery drivers employed by a marijuana delivery service, employer marijuana delivery service shall comply with subsection B of Section 5.09.050 of this chapter. An applicant for a marijuana delivery driver's license shall immediately upon the filing of an application inform the employer of the requirements of this section and of subsection B of Section 5.09.050. (Ord. 16-02 § 3)

#### **5.09.530 Fees and Term.**

A. Fees. Each applicant for a marijuana delivery driver's license shall pay to the City, upon making application, an annual license fee as stated in the City's Fee Schedule. The annual renewal license fee shall also be as stated in the City's Fee Schedule. Each applicant shall present to the City the prescribed amount set by the Department of Justice of the State of California for the processing of the applicant's fingerprints. None of the above fees shall be prorated, or refunded.

B. Term. All licenses, including renewals, shall be issued for the term of one year from the date and month of the original license approval. (Ord. 16-02 § 3)

#### **5.09.540 Referral of Application to Police Chief.**

The application for a marijuana delivery driver's license shall be referred to the Police Chief, who shall make the same type of investigation and approve or disapprove the application, as in the case of an application for a marijuana delivery service license, as specified in this chapter. (Ord. 16-02 § 3)

#### **5.09.550 Procedure on Disapproval.**

In the event of disapproval of an application for a marijuana delivery driver's license, the procedures to be followed by the Police Chief or City Manager, and the rights and duties of the applicant and of the Police Chief shall be the same as provided in the case of disapproval of an applicant for a marijuana delivery service license, insofar as applicable. (Ord. 16-02 § 3)

#### **5.09.560 Issuance—Term.**

Upon receipt of the approval of the City, it shall issue to the applicant a marijuana delivery driver's license, which shall be in the form of a card containing the price of the license and the licensee's name, photograph and right index fingerprint. Such license shall be good for one year from the issuance date. (Ord. 16-02 § 3)

#### **5.09.570 Notice of Revocation—Suspension—Procedures.**

The City may give a notice of intention to revoke a marijuana delivery driver's license, and may suspend such license pending a hearing, as in the case of a marijuana delivery service license, and the procedures for revocation, and the rights of the parties shall be the same, insofar as applicable as in the case of revocation of a marijuana delivery service license. (Ord. 16-02 § 3)

#### **5.09.580 Automatic Suspension.**

Any marijuana delivery driver's license issued hereunder shall be automatically suspended and be null and void during any period of time that the marijuana delivery driver's State motor vehicle operator's license is suspended, revoked, or for any other reason is invalid or inoperative. (Ord. 16-02 § 3)

#### **5.09.590 Mandatory Controlled Substance and Alcohol Testing Program.**

A. Every marijuana delivery service shall develop and adopt a mandatory controlled substance and alcohol testing certification program in compliance with Government Code Section 53075.5 and in accord with the procedures set forth in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations. A copy of the mandatory controlled

substance and alcohol testing certification program adopted pursuant to this section shall be delivered to the Police Chief and City Manager.

B. The employer marijuana delivery service's mandatory controlled substance and alcohol testing certification program shall contain a provision that, while the employer marijuana delivery service license is in effect, the employer marijuana delivery service shall, upon request of the City, make available for inspection copies of all results and other records pertaining to the testing for the use of alcohol and controlled substances conducted pursuant to the mandatory controlled substance and alcohol testing certification program required by this section.

C. The employer marijuana delivery service's mandatory controlled substance and alcohol testing certification program shall, at a minimum, require every marijuana delivery driver to submit to testing at least once every year and submit to mandatory testing following citation for a moving violation or being involved in a vehicle accident.

D. Failure to comply with the requirements of this section constitutes grounds for denial, revocation or suspension of a marijuana delivery service license pursuant to this chapter. The procedures for denial, suspension or revocation shall be the same as those prescribed for denial, suspension or revocation of a marijuana delivery service license elsewhere in this chapter. (Ord. 16-02 § 3)

#### **5.09.600 Grounds for Denial, Revocation or Suspension.**

The granting of a marijuana delivery driver's license or a renewal thereof may be denied and an existing license may be revoked or suspended if the license holder or applicant:

A. Has knowingly made a false statement in a material matter either in his or her application or in any reports or other documents furnished by him or her to the City.

B. Does not maintain and operate his or her marijuana delivery vehicle and other equipment in the manner and in the condition required by law and applicable regulations.

C. Is required to register as a sex offender under the provisions of Section 290 of the California Penal Code.

D. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.

E. Within the three-year period immediately preceding the application has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while intoxicated; or reckless driving involving bodily injury.

F. Has been convicted of any offense punishable as a felony, or has been convicted within a 10-year period immediately preceding the crime of theft in either degree.

G. Has been convicted of any offense involving moral turpitude.

H. Has been involved within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury.

I. Has been involved in three or more motor vehicle accidents within the year immediately preceding the application.

J. Failed to pay required license fees.

K. Has violated any provision of this chapter. (Ord. 16-02 § 3)

#### **5.09.610 Additional Conditions.**

In addition to the conditions and grounds for the issuance and retention of a marijuana delivery driver's license issued pursuant to Article II of this chapter, a marijuana delivery driver's license shall be issued and retained subject to the following conditions:

A. The marijuana delivery driver shall be at least 25 years old prior to issuance of a marijuana delivery driver's license.

B. Employment, or an offer of employment, as a marijuana delivery driver has been made.

C. The marijuana delivery driver's license shall become void upon termination of employment of the marijuana delivery driver.

D. The employer shall notify the City upon termination of employment of a marijuana delivery driver.

E. The marijuana delivery driver's license shall state the name of the employer.



F. The marijuana delivery driver shall return the marijuana delivery driver's license to the City upon termination of employment.

G. The marijuana delivery driver shall not test positive pursuant to the employer marijuana delivery service's mandatory controlled substance and alcohol testing certification program. (Ord. 16-02 § 3)

#### **5.09.620 Marijuana Delivery Driver Duties.**

A. Each marijuana delivery driver shall comply with all local, State and Federal laws.

B. No marijuana delivery driver shall permit any person other than a marijuana delivery vehicle driver, licensed in accordance with Article II, to operate any of its marijuana delivery vehicles in which marijuana is delivered within the City.

C. Each marijuana delivery driver shall have a copy of the record of the delivery request during the delivery of any marijuana in the City.

D. Each marijuana delivery driver shall not possess, transport or deliver concentrated cannabis.

E. Each marijuana delivery driver shall not possess, transport or deliver more than 28.5 grams of marijuana at any point in time. (Ord. 16-02 § 3)

#### **5.09.630 Fees.**

The City may adopt by ordinance or resolution fees, service charges or assessments in an amount sufficient to pay for the costs of carrying out the provisions of this chapter. (Ord. 16-02 § 3)