



CITY COUNCIL AGENDA STATEMENT



November 13, 2018

File ID: 18-0513

TITLE

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING SECTIONS OF CHULA VISTA MUNICIPAL CODE CHAPTER 5.19

RECOMMENDED ACTION

Council place the ordinance on first reading.

SUMMARY

This proposed ordinance amends provisions of Chapter 5.19 to clarify existing language, provide additional information and guidance, and ensure that elements of City's regulatory requirements are consistent with state law cannabis regulations.

ENVIRONMENTAL REVIEW

Environmental Notice

This project qualifies for a Categorical Exemption pursuant to the California Environmental Quality Act State Guidelines Section 15061(b)(3); Section 15183 (Projects Consistent with a Community Plan or Zoning); Section 15301 (Existing Facilities); and Section 15303 (New Construction or Conversion of Small Structures).

Environmental Determination

The City Council finds that the adoption of this amending Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to the following provisions of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

1. The amending Ordinance is exempt under Section 15061(b)(3).
2. The amending Ordinance is exempt under Section 15183.
3. The amending Ordinance is exempt under Section 15301.
4. The amending Ordinance is exempt under Section 15303.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not Applicable.

DISCUSSION

In March 2018, City Council voted to approve Ordinance 3418, which created a licensing and regulatory structure for the operation of cannabis businesses in the City of Chula Vista; such structure is codified in Chula Vista Municipal Code chapter 5.19. Based on both internal reviews and public feedback, staff now recommends that sections of chapter 5.19 be amended to clean up and clarify existing language, provide additional information, and maintain consistency with various state regulations.

Proposed amendments include the following clarifications and additions:

- Language explaining when the term “Owner” in the Phase One application process refers to an Owner of the Commercial Cannabis Business as opposed to an Owner of the Premises
- More specific information as to the minimum components that should be included in each operating plan submitted during the Phase One application
- Enumeration of the specific factors that may result in revocation, denial, or refusal to renew an employee work permit rather than referring to a another location in the ordinance where such factors are listed
- Explicit language prohibiting temporary cannabis events
- Clear notice that violations by license holder employees or agents may result in revocation or non-renewal of a City license
- A direct statement that fees, costs, and charges imposed are deemed a debt to the City and are recoverable by all legally available means
- Clarification that security surveillance must monitor both exterior and interior spaces where diversion could reasonably occur
- Various drafting error corrections intended to eliminate confusion

The proposed amendments also include the following changes:

- A provision to allow those with pharmaceutical business experience to instead qualify under the management qualifications provision, as few, if any, pharmaceutical businesses have owners with a 30% interest
- Language tying the value of goods a cannabis delivery employee is permitted to carry to the amount authorized under state law
- A requirement that security footage be maintained for a minimum of 90 days, which tracks state law requirements

Staff requests that the recommended amendments be approved to enhance clarity, maintain consistency, and streamline implementation of the Chapter 5.19 provisions.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City’s Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. These amendments support the Operational Excellence goal as they seek to clarify existing language and provide additional notice of requirements and prohibitions.

CURRENT-YEAR FISCAL IMPACT

The subject amendments to chapter 5.19 result in no current year fiscal impact to the City.

ONGOING FISCAL IMPACT

The subject amendments to chapter 5.19 may enhance the City’s ability to recover fees associated with commercial cannabis regulation. However, it is difficult and speculative to predict how such ability would be enhanced and in what amounts.

ATTACHMENTS

None.

Staff Contact: Kelley Bacon; Megan McClurg

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
SECTIONS OF CHULA VISTA MUNICIPAL CODE CHAPTER
5.19

WHEREAS, the Adult Use of Marijuana Act (AUMA), adopted by the voters of the State of California in November 2016, decriminalized non-medicinal cannabis and established a regulatory system for non-medicinal cannabis businesses in California; and

WHEREAS, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), enacted by the California State Legislature in June 2017, established a comprehensive set of laws regulating both individual and commercial medicinal and non-medicinal cannabis activity throughout the State of California; and

WHEREAS, under California Business and Professions Code section 26200(a)(1), local jurisdictions are authorized to either permit and regulate or prohibit the operation of cannabis businesses within their boundaries; and

WHEREAS, the California Attorney General's 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines") recognizes that the concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be impacted negatively by nuisance activity or more significant levels of crime; and

WHEREAS, the City of Chula Vista has experienced the negative impacts and secondary effects associated with the operation of unlawful cannabis businesses within its corporate boundaries; and

WHEREAS, unregulated businesses remain a source of danger and disruption for City residents and businesses; and

WHEREAS, pursuant to its police powers, including but not limited to California Constitution Article XI, Section 5(b) authority over municipal affairs, the City of Chula Vista has general authority over the public health, safety, and welfare of its citizens; and

WHEREAS, the proposed amendments do not cause a substantial change to the objectives and policies contained in Chula Vista Municipal Code chapter 5.19;

WHEREAS, it is the intent of the City Council to adopt a comprehensive set of requirements, restrictions, and robust enforcement procedures with regard to cannabis activity within the City in order to protect public safety, health, and other law enforcement interests;

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Environmental Findings

The City Council finds that the adoption of this amending Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

1. The amending Ordinance is exempt under Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, there is no possibility that the Ordinance would create cumulative impacts that are significant because the Ordinance does not authorize a total number of businesses in the City than would otherwise be authorized; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;
2. The amending Ordinance is also exempt under Section 15183 (Projects Consistent with a Community Plan or Zoning) since the types of businesses permitted by the Ordinance are consistent with those contemplated by general plan and zoning;
3. The amending Ordinance is also exempt under Section 15301 (Existing Facilities) since permitted cannabis businesses under the Ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301;
4. The amending Ordinance is also exempt under Section 15303 (New Construction or Conversion of Small Structures). The businesses will be established in an urban area, and given the build out of the existing City, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

Section II. Chapter 5.19 of the Chula Vista Municipal Code regarding commercial cannabis is amended to read as follows:

[Note: [Sections 5.19.010 through 5.19.040 remain unchanged]]

5.19.050 City License Application Process.

The following procedures shall govern the application process for the issuance of any City License under this Chapter.

A. Phase One Application Process

1. **Application Requirements.** Any Applicant seeking to obtain a City License to operate a Commercial Cannabis Business within the City shall submit a Phase One Application to the City, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase One Application must contain the following:

- a. Applicant’s name, address, telephone number, and e-mail address;
- b. Names and addresses of all Owners of the Commercial Cannabis Business, Officers, and Managers.

c. If any Applicant or Owner of the Commercial Cannabis Business is a business entity or any other form of entity, the entity's legal status, formation documents, and proof of registration with, or a certificate of good standing from, the California Secretary of State, as applicable.

d. The type of City License the Applicant is seeking.

e. A description of any and all Commercial Cannabis Activity engaged in as an owner, manager, lender, employee, volunteer, or agent by the Applicant and all Owners of the Commercial Cannabis Business, Officers, and Managers over the previous 5 years, including, but not limited to, the location of such activity and a copy of any permits, licenses, or other written forms of permission for such activity by a local or state government entity. An Applicant for a Storefront Retailer, Non-Storefront Retailer, Manufacturer, or Cultivator City License must demonstrate each of the following:

i. That at least one Manager has one of the following types of experience:

(A) a minimum of twelve (12) consecutive months, within the previous 5 years, as a Manager with managerial oversight or direct engagement in the day-to-day operation of a lawful Commercial Cannabis Business in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Activity demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or

(B) a minimum of sixty (60) consecutive months, within the previous 7 years, as a Manager with managerial oversight and direct engagement in the day-to-day operation of a lawful pharmaceutical business licensed and regulated by a state or the federal government. The 60 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; and

ii. That at least one Owner of the Commercial Cannabis Business has one of the following types of experience:

(A) a minimum of twelve (12) consecutive months as an Owner of a Commercial Cannabis Business, within the previous 5 years, in a jurisdiction permitting such Commercial Cannabis Activity. The 12 consecutive months of lawful Commercial Cannabis Business ownership demonstrated must be of a type substantially similar to that allowed by the City License for which the Applicant is applying; or

(B) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership of 30% or more in a lawful alcohol business licensed and regulated by a state or the federal government. The 36 months of experience demonstrated must be of a type substantially similar to that allowed by the City License for which the applicant is applying; or

(C) a minimum of thirty-six (36) consecutive months as an owner with an aggregate ownership interest of 30% or more in a lawful, properly licensed business with an average of ten (10) or more employees located within the City, thereby demonstrating a record of experience, familiarity and compliance with City rules and regulations.

f. Documentation demonstrating a minimum of \$250,000 in Liquid Assets available under the Applicant's control.

g. A business plan that contains, at a minimum, the following: a defined scope of planning and capital improvements; estimated revenues and expenses; and a demonstrated ability to operate in a highly regulated industry.

h. An operating plan that contains, at a minimum, the following provisions: capacity to comply with State and local laws and regulations; adequate staffing, security, and employee training; effective exterior and interior customer flow management, if applicable; compatibility with the surrounding neighborhood; community outreach; and environmental sustainability.

i. Submission by each individual Applicant, Owner of the Commercial Cannabis Business, Officer, and Manager of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If the Applicant or any Owner of the Commercial Cannabis Business or Manager is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

j. A statement, under penalty of perjury, by each individual Applicant, Owner of the Commercial Cannabis Business, Officer, and Manager, that all information provided thereby is true and correct and that he/she has not conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

k. If an individual Applicant, Owner of the Commercial Cannabis Business, Officer, or Manager, or any entity such individual has been associated with in such capacity, has been denied authorization to conduct Commercial Cannabis Activity in any jurisdiction and/or such Person's authorization to conduct Commercial Cannabis Activity in any jurisdiction has been suspended or revoked at any time, a description of each denial, suspension and/or revocation and documentation demonstrating a material change in circumstances since such denial, suspension, or revocation.

l. For an Applicant with 10 or more employees, a statement that the Applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a Labor Peace Agreement.

m. The Finance Director or Police Chief may request such additional information, as he/she deems necessary including documents, from the Applicant to evaluate Applicant's qualifications. If the Applicant fails to provide such additional information in the time allotted, the Application shall be considered abandoned.

2. Site Identification. Phase One Applicants must also identify and submit a proposed site for its proposed Commercial Cannabis Business. Such submittal shall include the address and a general description of the proposed site location. In the event the site will be leased or acquired from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the site on a form approved by the City acknowledging that the Owner(s)

of the site: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms already agreed to or to be negotiated with the Applicant that are or shall be consistent with the requirements of this Chapter.

3. Application Fee. The Phase One Application shall be accompanied by a nonrefundable application fee established by resolution of the City Council.

4. Initial Application Review by Finance Director. The Phase One Application shall be reviewed by the Finance Director for completeness and to determine if City's minimum City License qualifications have been satisfied. Phase One Applications may be rejected by the Finance Director for any of the following reasons in his/her discretion:

- a. The application is received after the designated time and date;
- b. The application is not in the required form and/or is incomplete. A Phase One Application shall not be considered complete until the Finance Director has: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase One application fee; and (iii) obtained all other information the Finance Director determines necessary to make a decision whether the Application meets the requirements of State Laws or this Code.
- c. The Applicant has failed to pay the application fee required by this Chapter and specified by City Council resolution;
- d. The Applicant has failed to demonstrate the financial capacity to operate its proposed Commercial Cannabis Business and to fulfill its obligations under this Chapter.
- e. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process.
- f. The Applicant, an Owner of the Commercial Cannabis Business, Officer, or Manager is under twenty-one years of age.
- g. The Applicant or any Owner of the Commercial Cannabis Business is an entity that is incorporated outside of the United States.
- h. The Applicant has failed to demonstrate the minimum experience required in accordance with section 5.19.050.A.1.e, above.
- i. The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager, has had his/her/its authorization to conduct Commercial Cannabis Activity in any jurisdiction suspended or revoked at any time, and such person has not demonstrated a material change in circumstances or corrective action since such suspension, and/or revocation.

5. Application Review by Police Chief. Phase One applications accepted by the Finance Director as minimally qualified shall be forwarded to the Police Chief for review and completion of any and all required background checks. Phase One Applications may be rejected by the Police Chief for any of the following reasons in his/her discretion:

a. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;

b. The Applicant, any Owner of the Commercial Cannabis Business, Manager, or Officer, or any other individual identified pursuant to 5.19.050.A.1.i has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

c. The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted of a felony.

d. The Applicant or any Owner of the Commercial Cannabis Business, Officer, or Manager has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

e. There are charges pending against the Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

f. The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

g. The Applicant, or any Owner of the Commercial Cannabis Business, Officer, or Manager has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Finance Director or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase One Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase One Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

7. Invitation to Submit Phase Two Application; Merit-Based System. Applicants who are approved by the Finance Director and Police Chief under the Phase One Application process, or by the City Manager upon appeal, shall be deemed qualified to submit a Phase Two Application. If the number of deemed "qualified" Phase One Applicants for Storefront Retail or Non-Storefront Retail Licenses exceeds the number of available City Licenses for those license types, a merit-based system established by the City shall be used to determine which of the qualified Applicants is invited to submit a Phase Two Application.

8. Phase One Approvals Valid for Six Months. Phase One approvals shall be valid for a maximum period of six (6) months in order to allow the Applicant to complete the Phase Two

process. City regulations issued pursuant to this Chapter, may provide for extensions of this time periods in limited, defined circumstances.

B. Phase Two Application Process

1. Application Requirements. The Phase Two Application shall be submitted in writing, signed under penalty of perjury, using the form adopted by the City for that purpose. Among other information, each Phase Two Application must contain the following:

- a. Proposed Premises location and description.
- b. Information and diagrams demonstrating that the proposed Premises location complies with the applicable locational requirements of this Chapter, the City's zoning code, and State Laws.
- c. Identification of all Owners of the proposed Premises location and a copy of all agreements for site control.
- d. Submission by each individual Owner of the proposed Premises location of fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department. If an Owner of the Proposed Premises location is an entity, the Police Chief, in his/her discretion, may require individual employees, officers, members, representatives, or partners of each entity to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.
- e. Proposed emergency action and fire prevention plan that includes, at a minimum, employee roles and responsibilities; emergency notification and egress procedures; fire hazard identification, maintenance, and procedures; and fire and life safety system identification, maintenance, and procedures.
- f. Proposed security plan that includes, at a minimum, employee roles and responsibilities; entry/exit security and procedures; security guard coverage and duties; lighting, alarm, and camera placement and operation; limited-access area identification and procedures; cash handling processes and procedures, and demonstrates compliance with section 5.19.160.
- g. Information required or necessary to demonstrate the ability to comply with the applicable operational requirements set forth in sections 5.19.080 through 5.19.140, as applicable.

2. Application Fee. The Phase Two Application shall be accompanied by a non-refundable application fee established by resolution of the City Council.

3. Site Approval. As part of the application process, the Applicant shall be required to obtain all required land use approvals from the City and/or any other governmental agency with jurisdiction, including a certification from the Development Services Director certifying that the business is an allowed use in the zone where it is located, and the proposed site meets all of the requirements of this Chapter and Title 19 of this Code.

4. Site Control. As a condition precedent to the City's issuance of a City License pursuant to this Chapter, in the event the Premises will be leased from another Person, the Applicant shall be required to provide a signed and notarized statement from the Owner(s) of the Premises on a form approved by the City acknowledging that the Owner(s) of the Premises: (a) has read this Chapter; (b) acknowledges and agrees to comply with all Premises Owner requirements set forth herein; and (c) the site is available for the operation of the Commercial Cannabis Business on terms agreed to with the Applicant that are consistent with the requirements of this Chapter.

5. Application Review by Development Services Director, Fire Chief, and Police Chief. Phase Two Applications shall be reviewed and are subject to approval by the Development Services Director, the Fire Chief and the Police Chief. A Phase Two Application may be rejected by the Development Services Director, Fire Chief, and/or Police Chief for any of the following reasons:

- a. The application is received after the designated time and date;
- b. The application is not in the required form and/or is incomplete. A Phase Two Application shall not be considered complete until the Development Services Director, Fire Chief, and Police Chief have: (i) determined that all requirements of the application have been provided to the city; (ii) received the nonrefundable Phase Two application fee; and (iii) obtained all other information the Development Services Director, Fire Chief, and Police Chief determine is necessary to make a decision whether the application meets the requirements of State Laws or this Code.
- c. The application fails to demonstrate that the proposed Premises location complies with this Chapter, the City's zoning code, and State Laws.
- d. The Applicant has made a false, misleading or fraudulent statement or omission of fact in the application or in the application process;
- e. An Owner of the proposed Premises location or any other individual identified pursuant to 5.19.050.B.1.d has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.
- f. An Owner of the proposed Premises location has been convicted of a felony.
- g. An Owner of the proposed Premises location has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.
- h. There are charges pending against an Owner of the proposed Premises location for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.
- i. An Owner of the proposed Premises location has been adversely sanctioned or penalized by City, or any other city, county, or state, for a material violation of state or local laws related to Commercial Cannabis Activity.
- j. An Owner of the proposed Premises location has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

6. Notice of Decision. The Development Services Director, Fire Chief, or Police Chief shall serve the Applicant, either personally or by first class mail addressed to the address listed on the application, with dated written notice of the decision to approve or reject the Phase Two Application. This notice shall state the reasons for the action, the effective date of the decision, and the right of the Applicant to appeal the decision to the City Manager. The City Manager's determination regarding the Phase Two Application shall be final. The City Manager shall provide dated written notice to the Applicant, either personally or by first class mail addressed to the address listed on the application, of the City Manager's determination and the right of the Applicant to seek judicial review of the City Manager's determination.

7. Conditional City Approval Valid for Six Months. Upon obtaining final approval of a Phase Two Application, an applicant shall be issued a conditional City approval. The conditional City approval shall be valid for a period of six (6) months to allow the Applicant to take all necessary actions to open its Commercial Cannabis Business. If the business is not fully permitted and operating by the end of this six (6) month period (the "Conditional Approval Period"), the conditional City approval will be void without the need for further action by the City. Notwithstanding the foregoing, if the only remaining action necessary for an Applicant holding a conditional City approval is the State's determination on such Applicant's pending State License application, the validity of the conditional City approval shall be extended until the earlier to occur of: (a) the State's determination on the issuance of the pending State License application, or (b) the date falling 6 months after the expiration of the Conditional Approval Period. City regulations issued pursuant to this Chapter may provide for other extensions of the Conditional Approval Period in limited, defined circumstances.

8. Pipeline Projects; Priority Regulations to be Issued. Prior to commencing the application process for City Licenses, City will develop and issue regulations to establish and clarify development rights priorities between, on the one hand, Commercial Cannabis Businesses, and, on the other hand, uses and businesses with separation requirements with respect to Commercial Cannabis Businesses. Regulations shall include, among other things, provisions applicable to Pipeline Projects and Existing Residential Uses.

C. Requirements Prior to Commencement of Operation. Prior to commencing Operations under a City License, in addition to any and all other applicable State and local requirements, a City Licensee must comply with the following requirements:

1. Fees and Charges. Pay in full all fees and charges required for the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Business shall be established by resolution of the City Council which may be amended from time to time.

2. Business License Tax. Pay to the City a business license tax as required by Code Chapter 5.02.

3. Permits and Approvals. Obtain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the Premises and the zoning district in which such business will be located.

4. Final Security Plan Approval. Obtain final security plan approval from the Police Chief for the Premises and Operation of the Commercial Cannabis Business.

5. Final Emergency Action and Fire Prevention Plan Approval. Obtain final safety approval from the Fire Chief for the Premises and Operation of the Commercial Cannabis Business.

6. Employee Work Permits. Obtain from the Police Chief work permits for each employee of the Commercial Cannabis Business whose name did not appear on an Application for a City License. Each employee shall submit their application for such work permit to the Police Chief, which application shall be under oath and shall include, among other things, the name, address, proposed job title, and past criminal record, if any, of the employee and shall be accompanied by the fingerprints of the employee. An application for an employee work permit shall be accompanied by the required fee(s) or the required renewal fee(s). The work permit, when issued, shall be valid for one year. The Police Chief may revoke, deny, or not renew any employee work permit upon finding that any of the factors apply:

a. The employee has made a false, misleading or fraudulent statement or omission of fact in the employee work permit application or renewal application;

b. The employee is under twenty-one years of age;

c. The employee has failed to submit fingerprints and other information deemed necessary by the Police Chief for a background check by the Chula Vista Police Department.

d. The employee has been convicted of a felony.

e. The employee has been convicted of any Crime of Moral Turpitude or any offense involving the use of a weapon.

f. There are charges pending against the employee for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

g. The employee has been adversely sanctioned or penalized by the City, or any other city, county, or state, for a material violation of state or local laws or regulations related to Commercial Cannabis Activity or to pharmaceutical or alcohol licensure.

h. The employee has conducted, facilitated, caused, aided, abetted, suffered, or concealed unlawful Commercial Cannabis Activity in the City or any other jurisdiction.

i. The employee has failed to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions) including any rule, regulation, condition or standard adopted pursuant to this Chapter, or any term or condition imposed on the City License, or any provision of local or State Laws and/or regulations.

j. The employee has been adversely sanctioned or fined for, charged with, or found guilty of or pled guilty or no contest to a charge of operating a Commercial Cannabis Business without the necessary licenses and approvals from the applicable state and/or local jurisdiction.

7. State License. Submit proof that the necessary State License has been obtained and that Applicant remains in good standing thereunder.

8. Agreement. Submit a fully executed agreement as required by section 5.19.070.

9. Insurance. Submit proof of insurance at coverage limits and with conditions thereon determined necessary and appropriate by the City's insurance and claims administrator.

10. Operational Requirements. Demonstrate compliance with any and all pre-opening operational requirements that may apply as specified in section 5.19.080 through 5.19.140, below, and the ability to comply with and all applicable and ongoing operational requirements.

D. General Rules.

1. If a Phase One or Phase Two application is denied or a corresponding conditional City License expires, no Applicant or Person named therein will be qualified to submit a new Phase One application until the passage of one year from the date of the denial or expiration.

2. Phase One and Phase Two applications shall include such supplemental materials as required by the rules and regulations adopted pursuant hereto. The City may, at the City Manager's discretion, require additional documentation associated with any application as may be necessary to enforce the requirements of State Laws and this Code.

3. Applicants shall have no right to operate under a City License until a City License is actually issued thereto by the City. Each Applicant assumes the risk that, at any time prior to the issuance of a license, the City Council may terminate or delay the program created under this Chapter.

4. Issuance of a City License does not create a land use entitlement. Furthermore, no City License will be officially issued and no Applicant awarded a City License may begin operations until the City Licensee is fully in compliance with all state and local laws and regulations, including but not limited to State Laws.

5. The City reserves the right to reject or approve any and all applications and conditional licenses based on the standards set forth in this Chapter, or otherwise in its sole discretion, taking into account the health, safety and welfare of the community, and in accordance with its general police powers authority.

E. Limits on Number of Applications Per Applicant/Owner. The number of applications allowed to be filed by each Applicant/Owner shall be determined by regulations promulgated by the City Council or the City Manager. Limits imposed, if any, may be applied on an overall basis, per license type, and/or per Council District.

5.19.060 Location Requirements for Cannabis Businesses

As set forth above in Code Section 5.19.030, a limited number of City Licenses for Commercial Cannabis Businesses shall be authorized and issued by the City. In locating such businesses, City Licensees shall be further subject to the following requirements.

A. In General. The licensed Premises of a Commercial Cannabis Business shall be a contiguous, fully enclosed area and shall be occupied only by one Licensee.

B. Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Storefront Retailers shall only be allowed in the following zones: (a) C-0 Administrative and Professional Office; (b) C-N Neighborhood Commercial; (c) C-C Central Commercial; (d) C-V Visitor Commercial; (e) C-T Thoroughfare Commercial; (f) other Commercial Zones in Specific Plans or Sectional Planning Area Plans that allow retail sales uses (including such zones that allow mixed commercial and residential uses); and (g) with a Conditional Use Permit, in the following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Specific Plans or Sectional Planning Area Plans that allow industrial uses.

2. Special Rules for Storefront Retailers in Industrial Zones. In addition to any and all other applicable Code requirements, Storefront Retailers proposed to be located in Industrial Zones (a) must be located in buildings with entrances that face, and are within 100 feet of a Public Street; and (b) must comply with parking and sign regulations applicable to retail sales businesses in commercial zones.

3. Separation Requirements.

a. Storefront Retailers shall not locate within 1,000 feet of any Day Care Center or any public or private school providing instruction for kindergarten or any grades 1 through 12.

b. Storefront Retailers shall not locate within 600 feet of any Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park.

c. Storefront Retailers shall not locate within 150 feet of any Residential Zone.

4. Retail Sales Requirements Apply. Storefront Retailers are retail sales uses for purpose of the Code. Except as otherwise provided in this Chapter, all retail sales use requirements for the allowed zone in which the business is located shall apply.

C. Non-Storefront Retailers.

1. Allowed Zones. Subject to the separation requirements set forth below, Non-Storefront Retailers shall only be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and equivalent Industrial Zones in Specific Plans or Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. Non-Storefront Retailers shall not locate within 150 feet of any Residential Zone.

3. Industrial Use Requirements Apply. Non-Storefront Retailers are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

D. Manufacturers; Distributors; Testing Laboratories; and Cultivators.

1. Allowed Zones. Subject to the separation requirements set forth herein, below, Manufacturers, Distributors, Testing Laboratories, and Cultivators shall be allowed in following Industrial Zones: I-L Limited Industrial; I-R Research Industrial; I General Industrial; and

equivalent Industrial Zones in Specific Plans or Sectional Planning Area Plans that allow industrial uses.

2. Separation Requirements. No Manufacturer, Distributor, Testing Laboratory or Cultivator shall be located within 150 feet of any zone allowing residential uses.

3. Industrial Use Requirements Apply. Manufacturers, Distributors, Testing Laboratories, and Cultivators are industrial uses for the purpose of the Code. Except as otherwise provided in this Chapter, all industrial use requirements for the allowed zone in which the business is located shall apply.

E. Standards for Measurement of Separation Distances. For purposes of this Section, separation distances between uses shall be measured as follows:

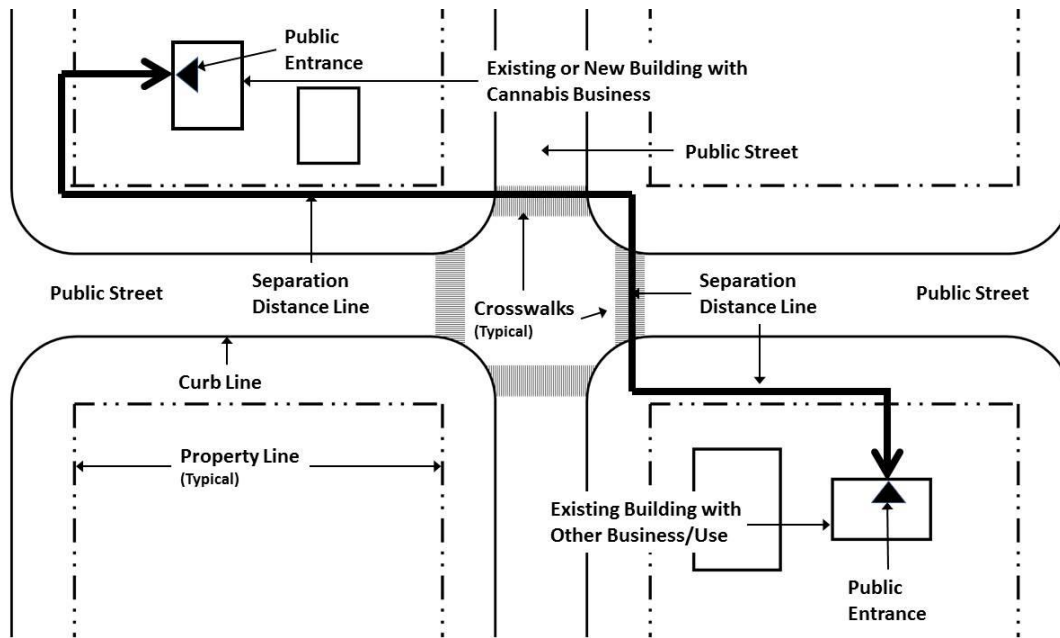
1. Measuring Points Established. Separation distance between uses shall be measured horizontally in a continuous series of straight lines that connect the two closest “measuring points” of each business or use as set forth herein, below.

a. For a Commercial Cannabis Business, the “measuring point” shall be the center point of the public entrance closest to a Public Street.

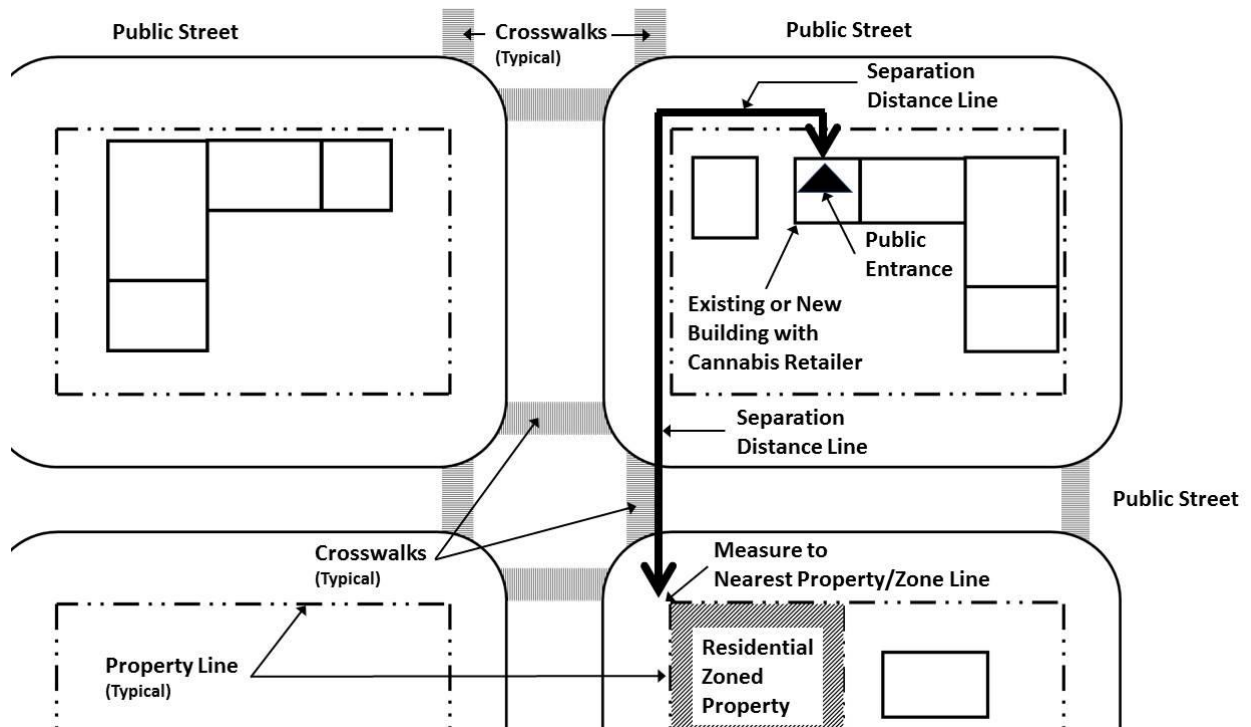
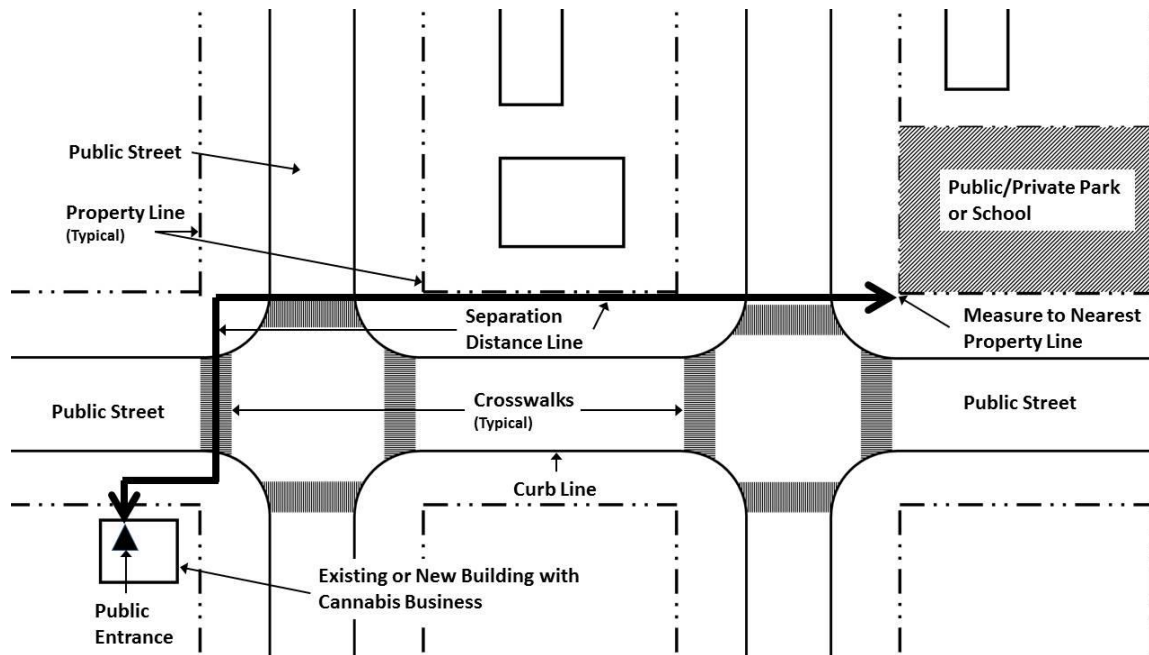
b. For a Day Care Center, Youth Center, Youth Oriented Business, or Treatment Facility, the “measuring point” shall be the center point of the public entrance closest to a Public Street.

c. For a public or private school, Public Park, Private Park, or Residential Zone, the “measuring point” shall be the point located on the legal parcel boundary line abutting a Public Street or zone line, as applicable, that is closest to the “measuring point” of the Commercial Cannabis Business at issue.

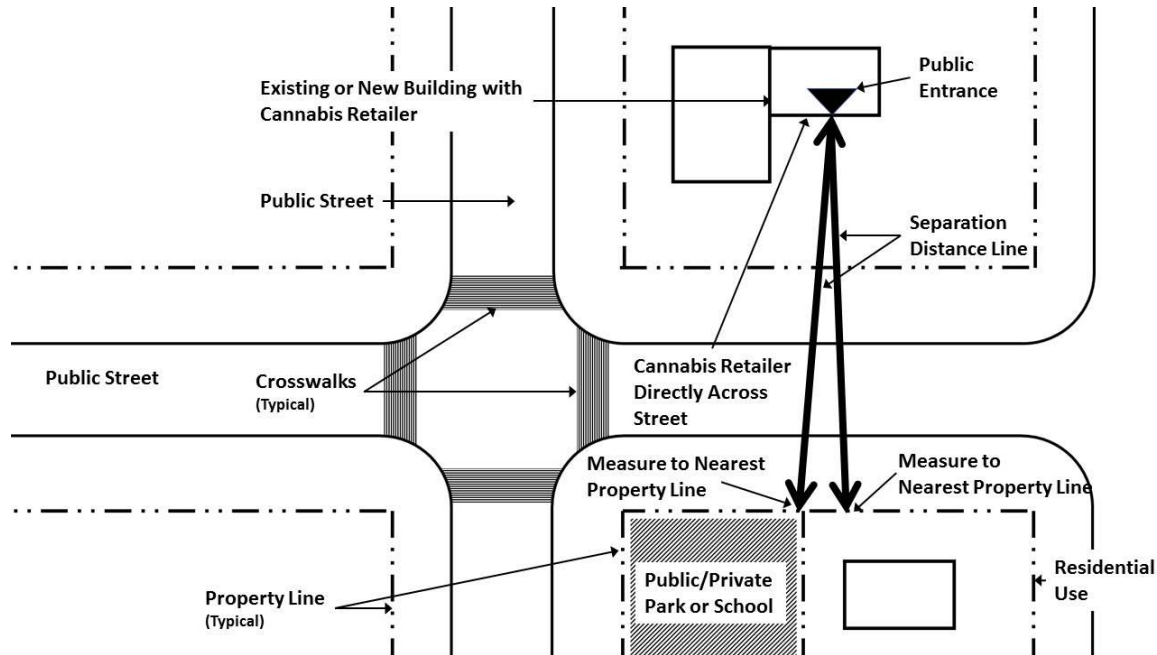
2. Measurement Paths; Examples. Measurements between public entrances shall start at the “measuring point” of Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the Public Street fronts, and in a direct line across intersections along the shortest pedestrian route toward the “measuring point” of the separated use until it reaches such “measuring point”. See illustrations below.



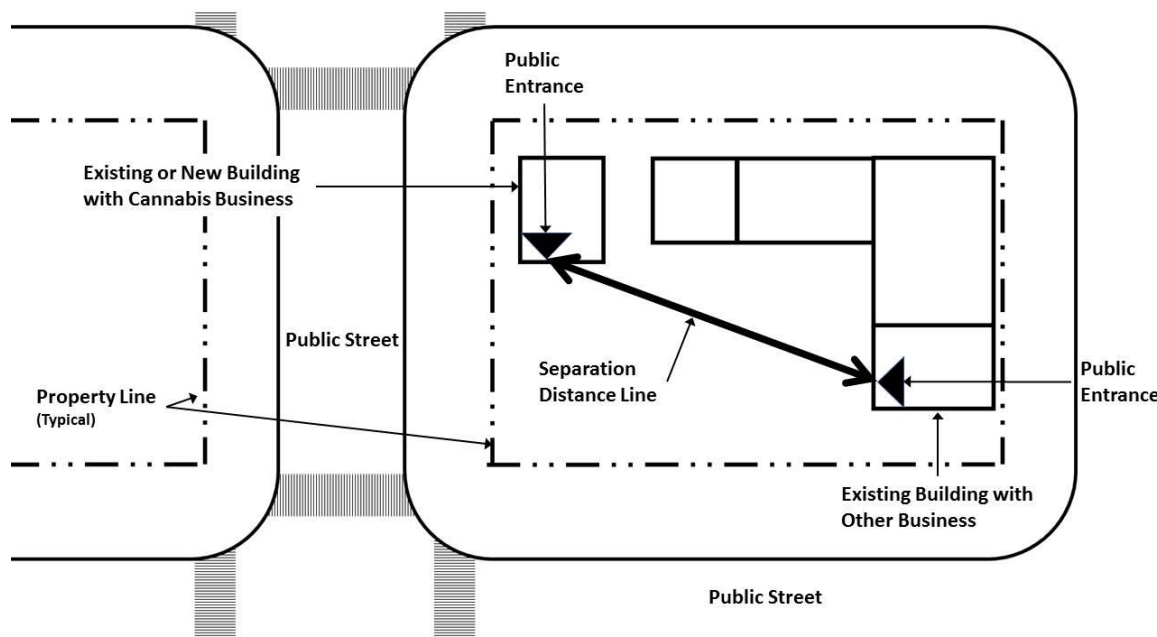
Measurements between public entrances and legal parcel boundary lines shall start at “measuring point” of the Commercial Cannabis Business and proceed in a continuous line to the closest property line of the Public Street, measured perpendicular to the Public Street. The measurement shall then continue along the property lines of the public street front(s), and in a direct line across intersections along the shortest pedestrian route towards the “measuring point” of the separated use until it reaches such “measuring point”. See illustration below.



Where a public or private school, Public Park, Private Park, or residential use or Residential Zone are directly adjacent to or across a Public Street from a Storefront Retailer or Non-Storefront Retailer, the separation distance shall be measured between the respective “measuring points” without regard to a Public Street or intersections. See illustration below.



Where a Commercial Cannabis Business and a Day Care Center, Youth Center, Treatment Facility, Youth-Oriented Business or existing residential use are on the same parcel, or contiguous parcels, the separation distance shall be measured in a straight line connecting their “measuring points”. See illustration below.



3. Interpretations, Determinations Made by Development Services Director. Interpretations and determinations of compliance with the requirements of this section and the calculation of separation distances shall be made by the Development Services Director. Exhibits from a Licensed Land Surveyor may be required by the City to make a final decision on compliance with the separation requirements of this subsection.

[Note: [Section 5.19.070 remains unchanged]]

5.19.080 Operating and Conduct Requirements for All Licensees and Individuals.

- A. No person shall consume Cannabis and/or Cannabis Products on the Premises of a Commercial Cannabis Business.
- B. No person shall cause or license the sale, dispensing, or consumption of alcoholic beverages or tobacco products on the Premises of a Commercial Cannabis Business.
- C. No Cannabis or Cannabis Products shall be visible from the exterior of any Premises issued a City License, or on any of the vehicles owned or used as part of a Commercial Cannabis Business. No outdoor storage of Cannabis or Cannabis Products is permitted at any time.
- D. Each Commercial Cannabis Business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the Commercial Cannabis Business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The Commercial Cannabis Business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Finance Director prior to being used by the City Licensee.
- E. All Cannabis and Cannabis Products sold, tested, distributed or manufactured shall be cultivated, manufactured, and transported by Commercial Cannabis Businesses that maintain operations in full conformance with State Laws, State regulations, local laws, and local regulations.
- F. All Commercial Cannabis Businesses shall have a Manager on the premises at all times during hours of operation.
- G. Each Commercial Cannabis Business shall provide the City Manager with the name, telephone number (both land line and mobile, if available) of an on-site Manager or Owner to whom emergency notice may be provided at any hour of the day.
- H. Each Commercial Cannabis Business premises shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the Premises or in the areas adjacent to the Commercial Cannabis Business is prohibited.
- I. Persons under the age of twenty-one (21) years shall not be allowed and are not allowed on the Premises of a Commercial Cannabis Business, and shall not be allowed and are not allowed to serve as a driver for a Non-Storefront Retailer.

J. It shall be unlawful and a violation of this Chapter for any Person to employ an individual at a Commercial Cannabis Business who is not at least twenty-one (21) years of age.

K. Odor Control. Odor control devices and techniques shall be incorporated in the Premises of all Commercial Cannabis Businesses to ensure that odors from Cannabis are not detectable off-site. Commercial Cannabis Businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Commercial Cannabis Business that is distinctive to its Operation is not detected outside of the Premises, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the Commercial Cannabis Business. As such, Commercial Cannabis Businesses must install and maintain the following equipment, or any other equipment which the Development Services Director determines is a more effective method or technology:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;

2. An air system that creates negative air pressure between the Commercial Cannabis Business's interior and exterior, so that the odors generated inside the Commercial Cannabis Business are not detectable on the outside of the Commercial Cannabis Business.

L. Safety, Security, and Operating Plans. Each Commercial Cannabis Business must comply with all requirements of the security plan approved by the Police Chief; with all safety requirements of the Emergency Action and Fire Prevention Plan approved by the Fire Chief; and with all provisions of the operating plan approved by the Development Services Director.

M. Display of City License and City Business License. The original copy of the City License and the City Business License shall be posted inside the Premises of the Commercial Cannabis Business in a location readily-visible to the public.

N. Employee Identification. Each and every employee of a City Licensee must, at all times when present on a Premises and while conducting a Delivery, wear an identification badge containing their photograph, age, the name of the City Licensee for whom they are employed, and, if the employee is a Manager, the employee's job title.

O. Delaying or Linger Prohibited. The City Licensee shall take reasonable steps to prevent individuals from delaying or lingering on the Premises without a lawful purpose.

P. Cannabis Use on Premises Prohibited. The City Licensee shall take reasonable steps to prevent the use and consumption of Cannabis or Cannabis Products on the Premises.

Q. Licenses and other Approvals. Throughout the Operation of a Commercial Cannabis Business, the City Licensee must maintain all applicable planning, zoning, building, and other applicable licenses, permits, and approvals from the relevant City department or division that may be applicable to the zoning district in which the Commercial Cannabis Business Premises is located.

R. Persons with Disabilities. Nothing in this Chapter exempts a Commercial Cannabis Business from complying with all applicable local, State and federal laws and regulations pertaining to persons with disabilities.

S. Discrimination. No Commercial Cannabis Business may discriminate or exclude patrons in violation of local, State and federal laws and regulations.

T. Fees and Charges.

1. No Person may conduct Commercial Cannabis Activity without timely paying in full all fees and charges required associated with the Operation of a Commercial Cannabis Activity. Fees and charges associated with the Operation of a Commercial Cannabis Activity shall be established by resolution of the City Council which may be amended from time to time.

2. City Licensees authorized to Operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, State and local law. Each Commercial Cannabis Business shall cooperate with City with respect to any reasonable request to audit the Commercial Cannabis Business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

U. Training Requirements. City reserves the right to impose training requirements on Managers, employees, and others involved in the Operation of a Commercial Cannabis Business, with the specific requirements to be determined and implemented through regulations.

V. Temporary Events Prohibited. Cannabis temporary events, as described in California Business and Professions Code section 26200 as presently adopted or further amended, are prohibited in the City at all times.

[Note: [Section 5.19.090 remains unchanged]]

5.19.100 Operating Requirement for Non-Storefront Retailers.

A. From a public right-of-way, there should be no exterior evidence of Non-Storefront Retailer Premises except for any signage authorized by this Code.

B. The general public is not permitted on the Premises of a City Non-Storefront Retailer Licensee except for the agents, applicants, managers, and employees of the City Non-Storefront Retailer Licensee and any agents or employees of the City.

C. A Non-Storefront Retailer shall operate in compliance with state and local laws and regulations, including but not limited to State Laws, at all times. Such laws and regulations shall include, but are not limited to:

1. Delivery Regulations.

a. All Deliveries of Cannabis or Cannabis Product shall be made by and individual person to an individual person. A Delivery of Cannabis or Cannabis Product shall not be made through the use of an unmanned vehicle.

b. A Delivery Employee conducting a Delivery shall only travel in an enclosed motor vehicle operated by a Delivery Employee.

c. Delivery of Cannabis or Cannabis Product shall only be made to a physical address (e.g., not to a P.O. Box or a street intersection).

d. Delivery of Cannabis or Cannabis Products shall not be made to any public or private school providing instruction for kindergarten or any grades 1 through 12, Day Care Center, Youth Center, Treatment Facility, Youth Center, Youth-Oriented Business, Public Park, or Private Park. Deliveries to any workplace shall remain subject to any employer's right to limit or prohibit such activity.

e. While conducting a Delivery, a Delivery Employee shall ensure the Cannabis or Cannabis Products are not visible to the public.

f. A vehicle used for Delivery shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of a Delivery vehicle.

g. A Delivery Employee shall, during Deliveries, carry a copy of the Non-Storefront Retailer's current City License, the Delivery Employee's government-issued identification, an identification badge issued by the Police Chief, and a Delivery invoice.

h. While making a Delivery, a Delivery Employee shall not at any time carry Cannabis and/or Cannabis Goods worth an amount in excess of that authorized by State Laws. This value shall be determined using the current retail price of all Cannabis and/or Cannabis Products carried by the Delivery Employee.

2. Product Regulations and Restrictions.

a. A Non-Storefront Retailer shall Sell no more than 28.5 grams of non-concentrated Adult-Use Cannabis in a single day to a single customer.

b. A Non-Storefront Retailer shall Sell no more than 8 grams of Adult-Use Cannabis Concentrate, including Cannabis Concentrate contained in Cannabis Products, in a single day to a single customer.

c. A Non-Storefront Retailer shall Sell no more than 6 immature Cannabis plants in a single day to a single customer.

d. A Non-Storefront Retailer shall not Sell edible Cannabis Products containing more than 10 milligrams of THC per serving.

e. A Non-Storefront Retailers shall not Sell edible Cannabis Products containing more than 100 milligrams of THC per package.

f. A Non-Storefront Retailer shall not Sell Cannabis Products that are in the shape of a human being, either realistic or caricature, animal, insect, or fruit.

g. A Non-Storefront Retailer shall not Sell Cannabis-infused beverages or powder, gel, or other concentrate with instruction for the preparation of Cannabis-infused beverages.

h. A Non-Storefront Retailer shall not provide free Cannabis or Cannabis Products to any Person.

[Note: [Sections 5.19.110 through 5.19.150 remain unchanged]]

5.19.160 Security Measures.

A. All City Licensees shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing Cannabis or Cannabis Products, and to deter and prevent the theft of Cannabis or Cannabis Products at the Premises of the Commercial Cannabis Business. Except as may otherwise be determined by the Police Chief, these security measures shall include, but shall not be limited to, all of the following:

1. Preventing individuals from remaining on the Premises of the Commercial Cannabis Business if they are not engaging in an activity directly related to the Operations of the Commercial Cannabis Business.
2. Establishing limited access areas accessible only to authorized Commercial Cannabis Business personnel.
3. All Cannabis and Cannabis Products, including Live Plants, shall be kept in a secure manner so as to prevent diversion, theft, and loss. All Cannabis and Cannabis Products that are being stored must be stored in a secured and locked room, safe, or vault. All Cannabis and Cannabis Products on display for Sale shall be displayed in a secure case.
4. Installing 24-hour security surveillance cameras of at least HD-quality to monitor areas on the Premises including, but not limited to: entrances and exits to and from the Premises; all interior spaces which are open and accessible to the public; all interior spaces where Cannabis, cash or currency is being stored for any period of time on a regular basis; all areas where the purchase, Sale, Distribution, or Transfer of Cannabis or Cannabis Products take place; and all exterior and interior spaces where diversion of Cannabis could reasonably occur. The City Licensee shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief. Video recordings shall be maintained for a minimum of 90 days, and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the Premises of the Commercial Cannabis Business.
5. Sensors shall be installed to detect entry and exit from all secure areas.
6. Panic buttons shall be installed in all Commercial Cannabis Businesses.
7. A professionally installed, maintained, and monitored alarm system, with the required City alarm permit under Chapter 9.06.150 of this Code.
8. Security personnel shall be on the Premises 24 hours a day or alternatively, as authorized by the Police Chief. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the Police chief, with such approval not to be unreasonably withheld.

9. Each Commercial Cannabis Business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

B. Each Commercial Cannabis Business shall identify a designated security representative/liaison to the City, who shall be reasonably available to meet with the Police Chief regarding any security related measures or and operational issues.

C. As part of the application and licensing process, each Commercial Cannabis Business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all Cannabis, Cannabis Products, and any currency.

D. Each Commercial Cannabis Business shall cooperate with the City whenever the City Manager makes a request, upon reasonable notice to the Commercial Cannabis Business, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

E. A Commercial Cannabis Business shall notify the Police chief within 24 hours after discovering any of the following:

1. Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Police chief.
2. Diversion, theft, loss, or any criminal activity involving the Commercial Cannabis Business or any Owner, Officer, Manager, agent, or employee of the Commercial Cannabis Business.
3. The loss or unauthorized alteration of records related to Cannabis, registering qualifying patients, primary caregivers, or employees or agents of the Commercial Cannabis Business.
4. Any other breach of security.

[Note: [Sections 5.19.170 through 5.19.190 remain unchanged]]

5.19.192 License Holder Responsible for Violations By Employees or Agents.

The City Licensee shall be responsible for all violations of the regulations and ordinances of the City committed by the City Licensee, or any employee or agent of the City Licensee. Violations by a City Licensee, or employee or agent of the City Licensee, may result in revocation or non-renewal of the City License.

5.19.194 Fees Deemed Debt to City

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City that is recoverable in any manner authorized by law.

[Note: [Sections 5.19.200 through 5.19.290 remain unchanged]]

Section III. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the

Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section IV. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section V. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section VI. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Gary Halbert
City Manager

Glen R. Googins
City Attorney