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Attorneys for Plaintiffs
COUNTY OF SANTA CRUZ, et al

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

COUNTY OF SANTA CRUZ; CITY OF
AGOURA HILLS; CITY OF ANGELS CAMP;
CITY OF ARCADIA; CITY OF ATWATER;
CITY OF BEVERLY HILLS; CITY OF CERES;
CITY OF CLOVIS; CITY OF COVINA; CITY
OF DIXON; CITY OF DOWNEY; CITY OF
MCFARLAND; CITY OF NEWMAN; CITY OF
OAKDALE; CITY OF PALMDALE; CITY OF
PATTERSON; CITY OF RIVERBANK; CITY
OF RIVERSIDE; CITY OF SAN PABLO; CITY
OF SONORA; CITY OF TEHACHAPI; CITY
OF TEMECULA; CITY OF TRACY; CITY OF
TURLOCK; and CITY OF VACAVILLE,

Plaintiffs,

v.

BUREAU OF CANNABIS CONTROL; LORI
AJAX, in her official capacity as Chief of the
Bureau of Cannabis Control; and DOES 1
through 10, inclusive,

Defendants.

Filing Fee Exempt
(Gov. Code § 6103)

E-FILED
5/13/2020 10:54 AM
Superior Court of California
County of Fresno
By: Louana Peterson, Deputy

Case No.: 19CECG01224

**REQUEST FOR JUDICIAL NOTICE,
EXHIBITS VOLUME 6 (EXHIBITS 31-40)**

Complaint filed: April 4, 2019
Trial Date: July 16, 2020

Assigned for all purposes to Judge Rosemary
McGuire, Department 403.

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EXHIBIT 31

ORDINANCE NO. 17-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.52 (Marijuana Cultivation) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

CHAPTER 8.52 – MARIJUANA CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY

Sections:

8.52.010 – Findings and purpose.

8.52.020 – Authority.

8.52.030 – Definitions.

8.52.040 – Prohibitions on commercial marijuana activity.

8.52.050 – Prohibitions on marijuana cultivation – Nuisance declared.

8.52.060 – Limited exemption from enforcement for medical marijuana.

8.52.070 – Abatement of other nuisances.

8.52.080 – Violations and penalties.

8.52.010 Findings and purpose.

The City Council finds and declares the following:

A. The Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), was approved by the voters of the State of California on November 8, 2016. The AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated

cannabis. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

B. To regulate the commercial use of non-medical marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, Sections 26000 et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses. The AUMA provides that the State shall begin issuing licenses to marijuana businesses under Division 10 of the Business and Professions Code by January 1, 2018.

C. Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity, if approval of the State license will violate the provisions of any local ordinance.

D. The AUMA permits cities to (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of marijuana businesses within its jurisdiction.

E. The AUMA allows for the planting, cultivation, harvesting, drying and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence, as well as the possession of any marijuana produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under Federal law.

F. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which are now collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allows a city to completely prohibit commercial medical marijuana activities, including the cultivation of medical marijuana.

G. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting

Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

H. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7, *et seq.*, and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

I. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana..." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

J. The *Federal Controlled Substances Act*, 21 U.S.C. §§ 801, *et seq.*, classifies marijuana as a Schedule I Drug, which is 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. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for any purposes.

K. Cities in California have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

L. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Regulating marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. The justification for regulating or banning commercial marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public health and safety, based on the value of marijuana plants and flowers and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where marijuana is cultivated in a visible location, particularly where such location is close to schools.

N. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

8.52.020 Authority.

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, Government Code sections 25845 and 53069.4, the MCRSA, the AUMA, and other applicable law.

8.52.030 Definitions.

As used in this Chapter the following specific terms shall have the following meanings:

A. "AUMA" means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. "Child care center" means any licensed child care center, daycare center, child care home, or any preschool.

C. "Community center" means any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

D. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, whether or not for profit. "Commercial marijuana activity" also includes the activities of any business

licensed by the State or other government entity under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

E. "Concentrated cannabis" shall have the same meaning as "cannabis concentrate" as defined in Business and Professions Code section 19300.5, as the same may be amended from time to time.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

G. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also means the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

H. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

I. "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must maintain a minimum ten (10) foot setback from any property line. Such setback distance shall be measured in a straight line from the fully enclosed and secure structure in which the marijuana plants are cultivated. The ten (10) foot setback requirement does not apply to cultivation occurring in a garage.

J. "Marijuana" means 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, and any product containing marijuana. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana also includes "cannabis" as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time.

K. "Marijuana cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, fixed or mobile, for medical, non-medical or other uses.

L. "MCRSA" means the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016, as the same may be amended from time to time.

M. "Person" means any individual, firm, co-partnership, joint venture, association, collective, cooperative, corporation, limited liability company, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

N. "Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

O. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully used as a residence.

P. "Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

Q. "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

R. "Youth-oriented facility" means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

8.52.040 Prohibitions on commercial marijuana activity.

A. Commercial marijuana activity for medical, non-medical or other purposes is expressly prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones. No person shall establish, operate, maintain, conduct or allow commercial marijuana activity for medical, non-medical or other purposes anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial marijuana activity for medical, non-medical, or other purposes, shall be approved by the City.

B. A property owner shall not rent, lease or otherwise permit any business that engages in commercial marijuana activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial marijuana activity on any real property owned or controlled by that property owner that is located in the City.

C. This section shall prohibit all activities for which a State license is required pursuant to the AUMA or the MCRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the AUMA or the MCRSA. The City shall also not issue any local license to a non-profit entity pursuant to Business and Professions Code section 26070.5.

D. Except for deliveries to primary caregivers or qualified patients, as defined in this chapter, all deliveries of marijuana or marijuana products to or from any location in the city are expressly prohibited. Except for deliveries to primary caregivers or qualified patients, as defined in this chapter, no person shall conduct or perform any delivery of any marijuana or marijuana products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting marijuana or marijuana products on public roads by a person licensed under either Chapter 3.5 of Division 8 or Division 10 of the California Business and Professions Code.

E. The prohibition in this section shall not prohibit a person 21 years of age or older from (1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams in the form of concentrated cannabis, (2) smoking or ingesting marijuana or marijuana products, (3) possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever, to the extent that such activities are authorized by Health and Safety Code section 11362.1, or (4) engaging in the indoor cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by Health and Safety Code sections 11362.1 and 11362.2.

8.52.050 Prohibitions on marijuana cultivation—Nuisance declared.

A. Marijuana cultivation, outdoors, for medical, non-medical or other purposes, is prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and is hereby declared to be unlawful and a public nuisance, except as otherwise provided in Section 8.52.060. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating marijuana outdoors. The foregoing prohibition shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding

any assertion that the person or persons cultivating marijuana are the primary caregiver or caregivers for qualified patients or that such person or persons are collectively or cooperatively cultivating marijuana. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

B. Marijuana cultivation, indoors, for medical purposes is prohibited. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

C. Marijuana cultivation, indoors, for non-medical purposes will be allowed consistent with State law. As required by State law, no more than six (6) live marijuana plants may be planted, cultivated, harvested, dried, or processed within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured. Any marijuana cultivation for non-medical marijuana purposes that exceeds the limits set forth in this subsection is hereby declared to be unlawful and a public nuisance.

8.52.060 Limited exemption from enforcement for medical marijuana.

A. The City is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this Chapter by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified in Section 17.06.030 on which a single family detached dwelling exists when all of the following conditions and standards are complied with:

1. The premises shall contain a legally permitted single family detached dwelling.

2. Cultivation of no more than twelve (12) marijuana plants per qualified patient. In the event a qualified patient has a primary caregiver cultivating marijuana plants for the qualified patient, only one primary caregiver may cultivate no more than twelve (12) marijuana plants for that qualified patient at any one time. In no circumstances shall a qualified patient have multiple primary caregivers cultivating marijuana plants for the qualified patient at the same time in the City.

3. Two (2) qualified patient limit to aggregate marijuana plant count for a maximum total of twenty-four (24) marijuana plants per premises.

4. At least one qualified patient or one primary caregiver, acting on behalf of the qualified patient pursuant to subsection A.2., must live on the premises.

5. All marijuana plants must be reasonably secured to prevent theft and access to the plants by persons under the age of twenty-one (21), to a standard satisfactory to the enforcement official.

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secured to

prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger than five (5) acres are exempt from this fencing provision so long as all other standards and conditions of subsection A. of this section are complied with and any barriers used are otherwise consistent with this Code.

7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection A.6. to the boundary line of the premises.

8. The designated marijuana cultivation area must not be visible from any public right-of-way.

9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. An original of this letter shall be submitted to and retained by the Community Development Department. The City shall prescribe forms for such letters.

10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received written confirmation from the court that he or she is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795 which shall be subject to verification by the enforcement official.

11. Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification cards issued by the Riverside County Department of Public Health. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card issued by the Riverside County Department of Public Health which shall be kept on the premises.

12. The address for the premises must be posted and plainly visible from the public right-of-way.

13. The marijuana cultivation shall not be within a building containing two or more dwelling units.

14. The marijuana cultivation shall not be upon any premises located within one thousand (1,000) feet of any school, community center, or park.

15. The marijuana cultivation shall not be upon any premises containing a child care center, church (religious facility), or youth-oriented facility.

B. Any marijuana cultivation for medical purposes that does not comply with all of the standards and conditions in subsection A. of this section is a public nuisance

and shall be subject to penalties and abatement as provided in Title 1 and Chapters 8.12 and 8.52 this Code.

8.52.070 Abatement of other nuisances.

Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building, as long as such abatement is consistent with State law.

8.52.080 Violations and penalties.

A. Violation of any provision of this Chapter is a misdemeanor and is subject to enforcement pursuant to the provisions of Title 1 of this Code. The provisions of this Chapter may be enforced by members of the Riverside County Sheriff's Department, persons employed by the City whose job descriptions require the person to enforce the provisions of this Code, including but not limited to, code enforcement officers, and such other enforcement officials as described in Section 1.16.020 of this Code or its successor sections. No provision of Title 1 or this Chapter shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code sections 11362.71 or 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Title 1 or this Chapter and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

B. Any violation of this Chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal or administrative action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such commercial marijuana business or marijuana cultivation site and restrain and enjoin any person from operating, conducting or maintaining a commercial marijuana business or marijuana cultivation site in a manner contrary to the provisions of this Chapter."

Section 2. Section 17.02.050 (Prohibited uses.) is hereby added to Chapter 17.02 (Establishment of Zoning Districts) of Title 17 (Zoning) of the Temecula Municipal Code to read as follows:

"Section 17.02.050 Prohibited uses.

"Commercial marijuana activity" and "marijuana cultivation" (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060."

Section 3. Table 17.06.030 of Chapter 17.06 (Residential Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity as a prohibited use and amending footnote number 10 as follows:

Table 17.06.030 Residential Districts									
Description of Use	HR	RR	VL	L-1	L-2	LM	M	H	HR-SM ⁹
Commercial Marijuana Activity	-	-	-	-	-	-	-	-	-
Marijuana Cultivation ¹⁰									
Notes: 10. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.									

Section 4. Table 17.08.030 of Chapter 17.08 (Commercial/Office/Industrial Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity as a prohibited use and adding footnote number 7 to Marijuana Cultivation as follows:

Table 17.08.030 Schedule of Permitted Uses Commercial/Office/Industrial Districts								
Description of Use	NC	CC	HT	SC	PO	BP	LI	
Commercial Marijuana Activity	-	-	-	-	-	-	-	-
Marijuana Cultivation ⁷								
Notes: 7. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.								

Section 5. Table 17.12.030 of Chapter 17.12 (Public/Institutional District) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity and Marijuana Cultivation as a prohibited uses and adding footnote number 3 to Marijuana Cultivation as follows:

Table 17.12.030 Schedule of Permitted Uses—Public/Institutional Districts	
Description of Use	Public/Institutional District (PI)
Commercial Marijuana Activity	-

Table 17.12.030 Schedule of Permitted Uses—Public/Institutional Districts	
Description of Use	Public/Institutional District (PI)
Marijuana Cultivation ³	-
Notes: 3. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.	

Section 6. Table 17.14.030 of Chapter 17.14 (Open Space/Recreation/Conservation Zoning Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commercial Marijuana Activity as a prohibited use and amending footnote number 2 as follows:

Table 17.14.030 Schedule of Permitted Uses—Open Space				
Schedule of Uses	PR	OS	OS-C	OS-C-SM
Commercial Marijuana Activities	-	-	-	-
Marijuana Cultivation ²	-	-	-	-
Notes: 2. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.				

Section 7. Section 17.16.045 (Prohibited uses.) is hereby added to Chapter 17.16 (Specific Plan Zoning District (SP-)) of Title 17 (Zoning) of the Temecula Municipal Code to read as follows:

"Section 17.16.045 Prohibited uses.

"Commercial marijuana activity" and "marijuana cultivation" (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060."

Section 8. Section 17.22.030 (Permitted uses.) of Article 1 (Generally) of Chapter 17.22 (Planned Development Overlay Zoning District (PDO-)) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding item D as follows:

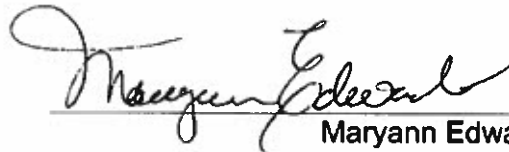
"D. "Commercial marijuana activity" and "marijuana cultivation" (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060."

Section 9. CEQA Findings. The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance prohibits commercial marijuana activity and regulates marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

Section 10. Severability. If any sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

Section 11. Effect of Ordinance. This Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 13th day of June, 2017.



Maryann Edwards, Mayor

ATTEST:



Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 17-02 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 9th day of May, 2017, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 13th day of June, 2017, by the following vote:

AYES:	3	COUNCIL MEMBERS:	Comerchero, Rahn, Edwards
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	2	COUNCIL MEMBERS:	Naggar, Stewart



Randi Johl, City Clerk

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EXHIBIT 32

ORDINANCE 1277

AN ORDINANCE OF THE CITY OF TRACY AMENDING CHAPTER 6.36 OF TITLE 6, "BUSINESSES, PROFESSIONS, AND TRADES" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LOCAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

WHEREAS, In November 1996, California voters approved the Compassionate Use Act of 1996 ("CUA") which authorized a limited defense to criminal charges for the use, possession or cultivation of marijuana (cannabis) for medical purposes when a qualified patient has a doctor's recommendation for the use of cannabis, and

WHEREAS, In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized the use of non-medicinal (recreational) cannabis by adults and the cultivation of up to six cannabis plants for personal use; and the AUMA also created a statewide regulatory framework for the cultivation, production, and sale of non-medical cannabis for adult use, and

WHEREAS, In June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity titled Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and

WHEREAS, CUA, AUMA and MAUCRSA do not prohibit cities from enacting regulations regarding commercial cannabis activities and uses, and

WHEREAS, The City Council seeks to establish regulations for commercial cannabis activity in the City of Tracy to ensure such activities are conducted in a manner that mitigates negative impacts, protects the public health, safety, and welfare of residents, and supports economic development, and

WHEREAS, The City of Tracy engaged in a comprehensive review and study of state and local cannabis regulations, conducted community outreach on this topic, and held various public meetings to discuss commercial cannabis activity, provide policy direction to staff, and receive public input on the topic of commercial cannabis activity.

WHEREAS, The City Council considered this ordinance at a duly noticed public hearing held on November 5, 2019.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings.

SECTION 2. The City Council hereby amends Chapter 6.36 as shown in Exhibit "A".

SECTION 3. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective

of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. This Ordinance shall take effect 30 days after its final passage and adoption.


SECTION 5. The City Council finds that this Ordinance is exempt from CEQA in accordance with Business and Professions Code section 26055(h) because it requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

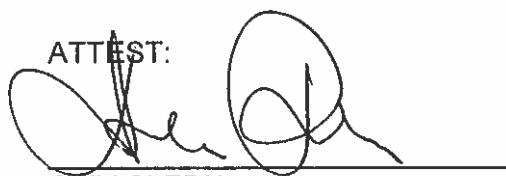
SECTION 6. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance 1277 was introduced at a regular meeting of the Tracy City Council on the 19th day of November 2019, and finally adopted on the 3rd day of December, 2019, by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTAIN:	COUNCIL MEMBERS: NONE


MAYOR

ATTEST:

CITY CLERK

THE FOREGOING DOCUMENT IS CERTIFIED
TO BE A CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

CITY CLERK, CITY OF TRACY
BY: 
DATE: 2/27/2020

Chapter 6.36 COMMERCIAL CANNABIS ACTIVITY.

Article 1. – General Provisions.

- Section 6.36.010 Purpose and Intent.
- Section 6.36.011 Legal Authority.
- Section 6.36.012 Definitions.
- Section 6.36.013 Compliance with State and Local Laws.

Article 2. – Cannabis Business Permits.

- Section 6.36.020 Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.
- Section 6.36.030 Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.
- Section 6.36.040 Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.
- Section 6.36.050 Application Procedure for a Cannabis Business Permit.
- Section 6.36.060 Selection of Cannabis Business Permittee(s).
- Section 6.36.070 Grounds for Denial of a Cannabis Business Permit.
- Section 6.36.080 Expiration of Cannabis Business Permits.
- Section 6.36.090 Suspension, Modification or Revocation of Cannabis Business Permits.
- Section 6.36.100 Renewal Applications.
- Section 6.36.110 Effect of State License Suspension, Revocation, or Termination.
- Section 6.36.120 Change in Contact Information; Updated Registration Form.
- Section 6.36.130 Transfer of Cannabis Business Permit.
- Section 6.36.140 Limitations on City's Liability.
- Section 6.36.150 Cannabis Employee Permit Required.

Article 3. – General Operating Procedures for all Cannabis Business Permittees.

- Section 6.36.160 City Business License.
- Section 6.36.170 Records and Recordkeeping.
- Section 6.36.180 Security Measures.
- Section 6.36.190 Restriction on Alcohol & Tobacco Sales.
- Section 6.36.200 Fees and Charges.
- Section 6.36.210 Packaging and Labeling.
- Section 6.36.220 Diversion Prohibited.
- Section 6.36.230 Emergency Contact.
- Section 6.36.240 Community Relations Manager.
- Section 6.36.250 Payment of Taxes.
- Section 6.36.260 Employee Permit Requirement.
- Section 6.36.270 Cannabis Consumption Prohibited.
- Section 6.36.280 Persons Under 21 Years of Age Prohibited.
- Section 6.36.290 Site Management.
- Section 6.36.300 Reporting Criminal Activity.
- Section 6.36.310 Display of Permit and City Business License.
- Section 6.36.320 Miscellaneous Operating Requirements.

Article 4. – Operating Procedures for Specific Cannabis Business Types.

- Section 6.36.330. Commercial Cannabis Cultivation Permit Requirements

Section 6.36.340 Cannabis Distribution Permit Requirements
Section 6.36.350 Cannabis Manufacturing Permit Requirements
Section 6.36.360 Cannabis Microbusiness Permit Requirements
Section 6.36.370 Cannabis Non-Storefront (Delivery) Retailer Permit Requirements.
Section 6.36.380 Cannabis Storefront (Dispensary) Retailer Permit Requirements
Section 6.36.390 Cannabis Testing Laboratory Requirements

Article 5. – Enforcement.

Section 6.36.400 Promulgation of Regulations, Standards and Other Legal Duties.
Section 6.36.410 Fees Deemed Debt to City of Tracy.
Section 6.36.420 Permit Holder Responsible for Violations.
Section 6.36.430 Inspection and Enforcement.
Section 6.36.440 Compliance with State Regulation.
Section 6.36.450 Violations Declared a Public Nuisance.
Section 6.36.460 Each Violation a Separate Offense.
Section 6.36.470 Criminal Penalties.
Section 6.36.480 Remedies Cumulative and not Exclusive.
Section 6.36.490 Service of Notices.

Article 1. General Provisions.

Section 6.36.010. Purpose and Intent

It is the purpose and intent of this Chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") to accommodate the needs of medically-ill persons in need of and provide access to cannabis for medicinal purposes and implement the desire of California voters who approved the Adult Use of Marijuana Act ("AUMA") by Proposition 64 in November 2016, while imposing sensible regulations on the use of land to protect the City's residents, neighborhoods, and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this Chapter to regulate the commercial cannabis activity in a responsible manner to protect the health, safety, and welfare of the residents of Tracy and to enforce rules and regulations consistent with state law. It is the further purpose and intent of this Chapter to require all commercial cannabis operators meeting the established requirements to obtain and renew annually a regulatory permit to operate a cannabis business in Tracy. Nothing in this Chapter is intended to authorize the possession, use, or provision of cannabis for purposes that violate state or local law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to operate a cannabis business in the City, such as a conditional use permit issued pursuant to Title 10 of this Code, and are in addition to any permits, licenses and approval required under state, county, or other law.

Section 6.36.011. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, the provisions of MAUCRSA, and any subsequent state legislation and/or regulations regarding same, the City of Tracy is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the

State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Tracy to all commercial cannabis activity.

Section 6.36.012. Definitions.

When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

"A-license" means a State License issued for cannabis or cannabis products that are intended for adults who are 21 years of age or older (adult-use) and who do not possess a physician's recommendation.

"A-licensee" means any person holding a license under California Business and Professions Code Section 26000 et seq. for cannabis or cannabis products that are intended for adults who are 21 years of age or older (adult-use) and who do not possess a physician's recommendation.

"Applicant" means an owner applying for a cannabis business permit or a person applying for a cannabis employee permit pursuant to this Chapter.

"Bureau" means the California Bureau of Cannabis Control within the California Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

"Cannabis" means all parts of the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

"Cannabis accessories" has the same meaning as in Section 11018.2 of the California Health and Safety Code.

"Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this Chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or drug, as defined by Section 109925 of the California Health and Safety Code.

"Cannabis employee permit" means a regulatory permit issued by the City pursuant to

this Chapter to persons working, volunteering, interning, or apprenticing at any cannabis business operating in the City.

"Cannabis product" means cannabis or a product containing cannabis, including, but not limited to, manufactured cannabis, and shall have the same meaning as in Section 11018.1 of the California Health and Safety Code. For purposes of this Chapter, "cannabis" does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

"Canopy" shall have the same meaning as that appearing in Title 3, Section 8000(f) of the California Code of Regulations.

"Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

"City" or "City of Tracy" means the City of Tracy, a California general law City.

"City Council" means the City Council of the City of Tracy.

"Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in this Chapter and in MAUCRSA. This definition shall have the same meaning as set forth in California Business and Professions Code Section 26001(k) as the same may be amended from time to time.

"Commercial cannabis business" or "Cannabis business" means any business or operation which engages in medicinal or adult-use commercial cannabis activity.

"Commercial cannabis business permit" or "City cannabis business permit" means a regulatory permit issued by the City pursuant to this Chapter to a person operating a cannabis business in the City. This permit is required before any commercial cannabis activity may be conducted in the City and does not constitute a land use entitlement nor a conditional use permit. The issuance of a cannabis business permit is made expressly contingent upon the business' ongoing compliance with all of the requirements of this Chapter and any regulations adopted or imposed by the City governing the commercial cannabis activity at issue.

"Cultivation" or "cultivate" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

"Cultivation area" means the area in which cannabis is cultivated.

"Customer" means a natural person 21 years of age or older or a natural person 18 years of age or older who possesses a physician's recommendation, or a primary caregiver.

"Delivery" means the commercial transfer of cannabis or cannabis products by a retailer directly to a customer off the premises of a cannabis retail facility, in the customer's home or other

locations authorized by this chapter. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer. This definition shall have the same meaning as Section 26001(p) of the California Business and Professions Code, as may be amended from time to time.

"Dispensary" or "Dispensary site" means a state-licensed, locally permitted business selling cannabis, cannabis products or cannabis accessories from a building or structure that is open to customers. For the purposes of this Chapter, the term "Dispensary" is synonymous with a storefront retailer.

"Dispensing" means any activity involving the licensed retail sale of cannabis or cannabis products from a retailer.

"Distribution" means the procurement, sale, and transport of cannabis and cannabis products between Licensees.

"Distributor" means a person holding a valid commercial cannabis state license for distribution, required by state law to engage in the business of purchasing cannabis from a licensed cultivator, or cannabis products from a license manufacturer, for sale to a licensed retailer.

"Labeling" means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.

"Licensee" means any person holding a State License under this Chapter, regardless of whether the license held is an A-license or an M-license, and includes the holder of a testing laboratory license.

"Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the Licensee.

"M-license" means a State License issued for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a State License for commercial cannabis activity involving medicinal cannabis.

"Manufacturing" or "manufacturing operation" means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or container.

"Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.

"Manufacturing site" means a location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods,

independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid commercial cannabis business permit for manufacturing from the City of Tracy and, a valid State License as required for manufacturing of cannabis products.

"Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation. For the purposes of this Chapter, the term "medicinal cannabis" is synonymous with medical cannabis.

"Microbusiness" means a business that engages in at least three of the following commercial activities: cultivation (provided that the cultivation area is less than 10,000 square feet); distribution; manufacturing (Level 1), storefront retailer (dispensary), or non-storefront retailer (delivery-only). This definition shall have the same meaning as Section 26001.1 of the California Business and Professions Code, as may be amended from time to time.

"Natural person" is an individual human being as opposed to an artificial or legal person like a company which may be a private entity or non-governmental organization or public government organization.

"Non-Storefront retailer" or "Retailer Non-Storefront" means a cannabis business that conducts sales of cannabis or cannabis products to customers exclusively by delivery and whose premises are closed to the public. The term "Non-Storefront retailer" is synonymous with the terms "delivery only" or "delivery service."

"Non-volatile solvent" means any solvent used in the extraction process that is not a volatile solvent. For purposes of this Chapter, a nonvolatile solvent includes ethanol and carbon dioxide used for extraction, or as it may be defined and amended by the state.

"Operation" means any act for which licensure is required under the provisions of this Chapter, or any commercial transfer of cannabis or cannabis products.

"Owner" means any of the following:

- (1) A person with an aggregate ownership interest of five (5) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.
- (2) The chief executive officer and the members of the board of directors of the entity engaging in the cannabis business.
- (3) An individual who will be participating in the direction, control, or management of the person applying for a City cannabis business permit.

"Package" means any container or receptacle used for holding cannabis or cannabis products.

"Patient" or "qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health and Safety Code Section 11362.5.

"Permit Holder" means person to whom a permit under this Chapter has been issued, including but not limited to a cannabis business permit and cannabis employee permit. For purposes of this Chapter, the term "Permit Holder" is synonymous with "Permittee."

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

"Person with an identification card" shall have the meaning given that term by California Health and Safety Code Section 11362.7.

"Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code.

"Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee. This definition shall have the same meaning as California Business and Professions Code Section 26001(ap), and as may be amended from time to time.

"Retailer" means a cannabis business issued a state license for the retail sale and delivery of cannabis or cannabis products to customers. This definition shall have the same meaning as California Business & Professions Code Section 26070 and as may be amended from time to time.

"Sell," "sale," "to sell" and "retail sale" include any transaction whereby, for any consideration, title to cannabis or cannabis products are transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

"State" means the State of California.

"State License" means a permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA and any subsequent State of California legislation regarding the same, to engage in commercial cannabis activity.

"Testing laboratory" means a laboratory, facility, or site that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the State of California to engage in cannabis testing activities.

"Transport" means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes

of conducting commercial cannabis activity authorized by the MAUCRSA which may be amended or repealed by any subsequent State of California legislation regarding the same.

Section 6.36.13. Compliance with State and Local Laws.

It is the responsibility of the owners and operators of the cannabis business to ensure that it is always operating in a manner compliant with all applicable state and local laws, policies, rules, and regulations including, but not limited to, the California Health and Safety Code, the California Water Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, Energy Code, Green Building Standards Code, Existing Building Code, Historical Building Code, the Tracy Municipal Code, the Tracy Zoning Code, all requirements and conditions related to the land use entitlement process, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate state law or local law with respect to the operation of a cannabis business. It shall be the responsibility of the owners and the operators of the cannabis business to ensure that the cannabis business is, at all times, operating in a manner compliant with all applicable state and local laws, including for as long as applicable, the Compassionate Use Act ("Prop. 215") and the Medical Cannabis Program Act ("MMPA") (collectively "the Medical Cannabis Collective Laws"), the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions that violate state law regarding the operation of a commercial cannabis business.

Article 2. – Cannabis Business Permits

Section 6.36.020. Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized in this Chapter, the commercial cultivation, manufacturing, processing, storing, laboratory testing, labeling, retail sale, delivery, distribution or transportation (other than as provided under California Business and Professions Code section 26090(e)), of cannabis or cannabis product is expressly prohibited in the City of Tracy.

Section 6.36.030. Cannabis Business Permit Required to Engage in a Commercial Cannabis Activity.

No person may engage in any commercial cannabis activity within the City of Tracy unless the person (1) has a valid Cannabis Business Permit from the City of Tracy; (2) has a valid State License; and (3) is currently in compliance with all applicable state and local laws and regulations pertaining to the cannabis business and the commercial cannabis activities and land use and zoning requirements, including obtaining a valid conditional use permit pursuant to Title 10 of this Code.

Section 6.36.040. Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

- (a) Maximum Number and Type of Authorized Cannabis Businesses Permitted. The number

of each type of cannabis business that shall be permitted to operate in the City at any one given time shall be as follows:

- i. Cultivation (Indoor Only) – no maximum number.
- ii. Distribution – no maximum number.
- iii. Manufacturing – no maximum number.
- iv. Microbusiness – no maximum number.
- v. Retailer - Non-Storefront (Delivery Only) – no maximum number.
- vi. Retailer - Storefront (Dispensary) – a maximum of four (4) storefront retailers.
- vii. Testing Laboratory – no maximum number.

This Section is only intended to create a maximum number of cannabis businesses that may be issued permits to operate in the City under each category. Nothing in this Chapter creates a mandate that the City Council must issue any or all of the cannabis business permits if it is determined that the applicants do not meet the standards which are established in the application requirements or further amendments to the application process.

(b) Each year following the Police Chief's initial award of cannabis business permits, if any, or at any time in the City Council's discretion, the City Council may reassess the number of cannabis business permits which are authorized for issuance. The City Council, in its discretion, may determine by ordinance whether the number of commercial cannabis permits should change.

Section 6.36.050. Application Procedure for a Cannabis Business Permit.

(a) The City Council shall adopt by resolution the procedures to govern the application process, and the manner in which the decision to issue a cannabis business permit(s) is made. Said resolution shall authorize City staff and/or consultants to provide detailed objective review criteria to be evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review criteria ("Review Criteria") and to prepare the necessary forms, solicit applications, and review and evaluate the applicants. Applications for a cannabis business permit shall include, but not be limited to, the following information:

- i. Applicant Background Information.
 - A. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
 - B. The phone number and address to which any notices and correspondence regarding the application is to be mailed.
 - C. Owners. The name, address, telephone number, title, respective percentage of ownership, and function of each of the owners.
 - D. Background checks. For each of the interested parties:
 1. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.
 2. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense

charged, the offense convicted, the sentence, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.

3. Consent to fingerprinting and a criminal background investigation.

ii. Business operations.

- A. Business plan. A plan describing how the cannabis business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include proof of sufficient capital to start the business and sustain it through the first three months of operation, plans for handling cash and transporting cannabis and cannabis products to and from the site.
- B. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the surrounding community, including the neighborhood and businesses, and how the designee can be contacted.
- C. Document(s) demonstrating property owner acknowledgement. Document(s) demonstrating that the property owner is fully aware that the applicant intends to use the property for cannabis business purposes. Document(s) must include name, address, and contact information for the property owner.
- D. State licenses. Copies of any state licenses relating to cannabis that the applicant holds.
- E. Tax compliance. A current copy of the applicant's city business operations tax certificate, state sales tax seller's permit, and the applicant's most recent year's financial statement and tax returns.
- F. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
- G. Budget. A copy of the applicant's most recent annual budget for operations.
- H. Price list. A list of the most recent prices for all products and services provided by the applicant.

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

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

v. Indemnification. An agreement, in a form approved by the City Attorney, whereby the applicant: (1) releases the City, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (a) any repeal or amendment of this Chapter or any provision of Title 10 of the Zoning Code relating to cannabis, and (b) any arrest or prosecution of the applicant or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies, and holds harmless the City and its agents, officers, elected officials, and employees from and against any and all claims or actions: (a) brought by adjacent or nearby property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from operations at the commercial cannabis business, and (b) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of cannabis produced or processed at the site or by the business.

(b) Non-Refundable Application Fee. At the time of filing, each applicant shall pay a non-refundable application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.

(c) Review of Applications. The Development Services Director or designee, Finance Director or designee, and Fire Chief or designee ("Review Committee") shall conduct an initial review of the applications and rank and score the applications utilizing the Review Criteria. The Review Committee shall then make a recommendation to the Police Chief or designee, who shall make a final selection in accordance with Section 6.36.060.

(d) THE CITY'S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. Prior to cannabis business permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to cannabis business permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application.

Section 6.36.060. Selection of Cannabis Business Permittee(s).

(a) The Police Chief or designee shall determine which applicants will be granted a cannabis business permit in accordance with the procedures established referenced in Section 6.36.050, subsection (a). The Police Chief's or designee's decision as to the selection of permittees shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

(b) Upon issuance of a conditional use permit, a cannabis business permit is valid at only the location granted under the conditional use permit and State License.

(c) Issuance of a cannabis business permit does not constitute a land use entitlement nor does it constitute a land use permit. Following the Police Chief's selection, the prevailing candidates(s) shall apply to the City's Development Services Department to obtain a conditional use permit pursuant to Section 10.08.4250 and any other required land use approvals or entitlements for the permittee's premises. Land use approvals shall include compliance with all applicable provisions of California Environmental Quality Act.

(d) Conditions placed on the conditional use permit issued under Title 10 of this Code are also conditions of the cannabis business permit. Any violation of the conditional use permit's conditions is grounds for suspending or revoking the cannabis business permit.

(e) Furthermore, no permittee shall begin operations, notwithstanding the issuance of a cannabis business permit, unless all of the state and local laws and regulations have been complied with, including but not limited to the requirements of this Chapter and Section 10.08.3196 of this Code.

f) Notwithstanding anything in this Chapter to the contrary, the City reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a cannabis business permit until a permit is issued, and then only for the duration of the term specified in the permit. Each applicant assumes the risk that, at any time prior to the issuance of a cannabis business permit, the City Council may terminate or delay the program created under this Chapter.

(g) If an application is denied for a cannabis business permit, a new application may not be filed for one (1) year from the date of the denial.

(h) Permit Fee. Each person granted a Cannabis Business Permit shall pay the permit fee established by resolution of the City Council, to cover the costs of administering the cannabis business permit regulatory program created in this Chapter.

Section 6.36.070 Grounds for Denial of a Cannabis Business Permit.

(a) The City may deny a cannabis business permit if the Police Chief or designee(s) determines that one or more of the following circumstances exist:

- i. The application received is incomplete, filed late, or not responsive to the requirements of this article;
- ii. The application contains a false or misleading statement or omission of a material fact;
- iii. The operation of a cannabis business described in the application fails to comply with any of the requirements in this code, state law, or any other regulation;
- iv. The applicant or any of its owners has any unpaid and overdue administrative penalties imposed for violations of this chapter;
- v. The applicant has not paid the applicable business operations tax pursuant to Chapter 6.04 or subsequent Chapter(s) or taxes which may be amended from time to time by the voters.
- vi. Within 12 months of the date of application, either the applicant has had its cannabis business permit revoked; or any of its owners were associated with another business that had its cannabis business permit revoked; or
- vii. Operation of the cannabis business is a threat to the public health, safety, or welfare.

Section 6.36.080. Expiration of Cannabis Business Permits.

Each cannabis business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Cannabis business permits may be renewed as provided in Section 6.36.100.

Section 6.36.090. Suspension, Modification, or Revocation of Cannabis Business Permits.

(a) The Police Chief or designee may suspend, modify, or revoke a cannabis business permit issued pursuant to the provisions of this Chapter for any of the following reasons:

- i. One or more of the circumstances upon which a cannabis business permit could be

- denied, as described in Section 6.36.070, exists or has occurred;
 - ii. One or more conditions of the cannabis business permit has been violated; or
 - iii. The Permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this Chapter.
- (b) The Police Chief's or designee's decision as to the suspension, modification, or revocation of a cannabis business permit shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Section 6.36.100. Renewal Applications.

- (a) An application for renewal of a cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- (b) The renewal application shall contain all the information required for new applications.
- (c) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- (d) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
- i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
 - ii. The application is filed less than sixty (60) days before its expiration.
 - iii. The cannabis business permit is suspended or revoked at the time of the application.
 - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit for a vacant site and is subject to discretionary permit processing and construction.
 - v. The permittee fails to or is unable to renew its State License.
- (e) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.
- (f) If a renewal application is denied, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.
- (g) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

Section 6.36.110. Effect of State License Suspension, Revocation, or Termination.

- (a) Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall constitute grounds for revoking a City cannabis business permit.
- (b) Permittee shall inform the Police Chief or designee of any suspension, revocation or termination of their State license within one business day of receiving notice from the State. Failure to do so shall constitute grounds for revoking a City cannabis business permit.

Section 6.36.120. Change in Contact Information; Updated Registration Form.

- (a) Any time the contact information listed on a cannabis business permit has changed, the business shall re-register with the Police Chief or designee(s). The process and the fees for re-registration shall be the same as the process and fees set forth in Section 6.36.100.
- (b) Within fifteen (15) calendar days of any other change in the information provided in the application or any change in status of compliance with the provisions of this Chapter, including any change in the cannabis business ownership or management members, the applicant shall file an updated registration form with the Police Chief or designee(s) for review along with a registration amendment fee, as set forth in Section 6.36.100.

Section 6.36.130. Transfer of Cannabis Business Permit.

- (a) The holder of a cannabis business permit shall not transfer ownership or control of the permit to another person or entity unless and until the transferee obtains an amendment to their State License, if required, and an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief or designee(s) in accordance with all provisions of this Chapter (as though the transferee were applying for an original cannabis business permit) accompanied by a transfer fee in an amount set by resolution of the City Council, and the Police Chief or designee(s) determines that the transferee passed the background check required for permittees and meets all other requirements of this Chapter.
- (b) Cannabis business permits issued through the grant of a transfer by the Police Chief shall be valid for a period of one year beginning on the day the Police Chief approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.
- (c) Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the Police Chief or designee(s) through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for revocation.
- (d) A permittee may change the form of business entity without applying to the Police Chief or designee(s) for a transfer of permit, provided that either:

- i. The membership of the new business entity is substantially similar to original permit holder business entity (at least 51% of the membership is identical), or
- ii. If the original permittee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and to comply with Section 6.36.130, subsection (b), provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City permit application) of the original permittee entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the permit holder is required to notify the Police Chief or designee(s) in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for permit revocation.

- (e) No cannabis business permit may be transferred when the Police Chief or designee has notified the permittee that the permit has been or may be suspended or revoked.
- (f) Any attempt to transfer a cannabis business permit either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

Section 6.36.140. Limitations on City's Liability.

To the fullest extent permitted by law, the City of Tracy shall not assume any liability whatsoever with respect to having issued a cannabis business permit pursuant to this Chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any cannabis business permit, the applicant shall be required to meet all of the following conditions before receipt of the permit:

- (a) The applicant must execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Tracy, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the cannabis business permit, the City's decision to approve the operation of the commercial cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any state or local laws by the cannabis business or any of its officers, employees or agents.
- (b) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Attorney and/or Risk Manager.
- (c) Reimburse the City of Tracy for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the City of Tracy may be required to pay as a result of any legal challenge related to the City's approval of the applicant's cannabis business permit, or related to the City's approval of a commercial cannabis activity. The City of Tracy may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

Section 6.36.150. Cannabis Employee Permit Required.

(a) Any person who is an employee or who otherwise works within a cannabis business must be legally authorized to do so under applicable state law.

(b) Any person who is an employee or who otherwise works within a cannabis business must obtain a cannabis employee permit from the City prior to performing any work at any cannabis business.

(c) Applications for a cannabis employee permit shall be developed, made available, and processed by the Police Chief or designee(s), and shall include, but not be limited to, the following information:

- i. Name, address, and phone number of the applicant;
- ii. Verification of the applicant's age and identity. A copy of a birth certificate, driver's license, government issued identification card, passport or other proof that the applicant is at twenty-one (21) years of age must be submitted with the application;
- iii. Name, address of the cannabis business where the person will be employed, and the name and phone number of the primary manager of that business;
- iv. A list of any crimes enumerated in California Business and Professions Code Section 26057(b)(4) of which the applicant has been convicted;
- v. Name, address, and contact person for any previous employers from which the applicant was fired, resigned, or asked to leave and the reasons for such dismissal or firing;
- vi. The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the Police Chief or designee(s).
- vii. A fee paid in an amount set by resolution of the City Council in an amount necessary to cover the costs of administering the cannabis employee permit program. The fee is non-refundable and shall not be returned in the event the employee permit is denied or revoked.

(d) The Police Chief or designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant:

- i. Has ever been convicted of a violent felony as defined by California Penal Code Section 667.5, or equivalent offenses in other states;
- ii. Has ever been convicted of a crime involving dishonesty, fraud or deceit, including but not limited to fraud, forgery, theft, or embezzlement as those offenses are defined in California Penal Code Sections 186.11, 470, 484, and 504a, respectively; or; equivalent offenses in other states; or
- iii. Has ever been convicted of the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, except for cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.
- iv. Employers who wish to hire an individual notwithstanding this rule shall apply to the Police Chief, who at his/her sole discretion may issue a written waiver. The employer or employee shall submit a statement of rehabilitation for each conviction. The statement of rehabilitation may contain evidence that the employer or employee would like the Police Chief to consider that demonstrates the employee's fitness for a

cannabis employee permit. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the individual providing the reference. The Police Chief's or designee's decision as to the selection of an employee shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Discovery of facts showing that the applicant has either failed to disclose or has been convicted of any of the above offenses are grounds for denial of the permit. Where the applicant's sentence (including any term of probation, incarceration, or supervised release) for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is completed, such underlying conviction shall not be the sole ground for denial of a commercial cannabis employee permit.

(e) The Police Chief or designee shall implement the cannabis employee permit process in accordance with the procedures and rules established by resolution adopted by the City Council.

(f) A cannabis employee permit shall be valid for a twelve (12) month period from date of issuance and must be renewed on an annual basis. Renewal applications shall contain all the information required in Section 6.36.150, subsection (c) above including the payment of a renewal application fee in an amount to be set by resolution of the City Council.

(g) The City may immediately revoke the cannabis employee permit should the permit holder be convicted of a crime listed in subsection (d)(ii) above. The following are additional grounds for revoking a cannabis employee permit based on the specific role and function of that employee:

- i. A cannabis employee permit shall be revoked if the employee permit holder:
 - A. Sells or provides cannabis or cannabis products to a minor;
 - B. Attempts to give away cannabis or cannabis products while working, unless as authorized pursuant to Section 5411 of Chapter 3, Division 42, Title 16 of the California Code of Regulations;
 - C. Acts to illegally divert cannabis or cannabis products to the black market, including stealing cash; stealing the licensee's product for personal consumption; or selling the licensee's product and keeping the proceeds of the sale; or
 - D. Is cited for driving under the influence of alcohol, cannabis or another illicit drug while on- or off-duty.

(h) The applicant may appeal the denial or revocation of a cannabis employee permit to the City Manager by filing a notice of appeal with the City Clerk within ten (10) working days of the date the applicant received the notice of denial or revocation, which appeal shall be conducted as set forth in Chapter 1.12 of this Code.

Article 3. – General Operating Procedures for Cannabis Business Permittees

Section 6.36.160. City Business License.

Prior to commencing operations, a cannabis business shall obtain a City of Tracy business license.

Section 6.36.170. Records and Recordkeeping.

(a) Each owner and operator of a cannabis business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a commercial cannabis business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each cannabis business shall file a sworn statement detailing the number of sales by the commercial cannabis business during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid. On an annual basis, each owner and operator shall submit to the City a financial audit of the business's operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and financial audit as determined by the City Manager or designee(s).

(b) Each owner and operator of a commercial cannabis business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the commercial cannabis business. The register required by this paragraph shall be provided to the Police Chief or designee(s) upon a reasonable request.

(c) All cannabis businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes in accordance with the MAUCRSA.

(d) Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPAA) and other applicable regulations, each cannabis business shall allow City of Tracy officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated in writing by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

Section 6.36.180. Security Measures.

(a) A permitted cannabis business shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent theft of cannabis or cannabis products at the cannabis business. Except as may otherwise be determined by the Police Chief or designee and Fire Chief or designee, these security measures shall include, but shall not be limited to, all of the following:

- i. Preventing individuals from remaining on the premises of the cannabis business if they are not engaging in an activity directly related to the permitted operations of the cannabis business.
- ii. Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
- iii. All cannabis and cannabis products shall be stored in a secured and locked room, safe, or vault, provided that such secured areas meet the emergency egress requirements in the Building Code. All cannabis and cannabis products that are being sold for retail purposes shall be kept in a manner as to prevent diversion, theft, and loss.
- iv. On-site security guard(s), licensed by the State of California Bureau of Security and Investigative Services, may be required as determined by the Police Chief or designee, and shall be subject to the prior review and approval of the Police Chief or his/her designee(s), with such approval not to be unreasonably withheld.
- v. Installing security surveillance cameras of sufficient resolution to allow the identification of persons and objects to monitor all entrances and exits to and from the premises, all interior spaces within the commercial cannabis business 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 and all interior spaces where diversion of cannabis could reasonably occur. The commercial cannabis business shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Police Chief or designee(s), and that it is compatible with the City's software and hardware. In addition, remote access to the video footage from the cameras shall be provided to the Police Chief or designee(s). Video recordings shall be maintained for a minimum of ninety (90) days, or as required under state law, and shall be made available to the Police Chief or designee(s) upon request without unreasonable delay. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business.
- vi. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.
- vii. A commercial cannabis business shall notify the Police Chief or his/her designee(s) within twenty-four (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 City Manager or his/her designee(s).
 - (2) Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.
 - (3) The loss or unauthorized alteration of records related to cannabis, customers or employees or agents of the commercial cannabis business.
 - (4) Any other breach of security.

Section 6.36.190. Restriction on Alcohol and Tobacco Sales.

- (a) It shall be unlawful to cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the cannabis business.

(b) It shall be unlawful to cause or permit the sale of tobacco products on or about the premises of the cannabis business.

Section 6.36.200. Fees and Charges.

No person may commence or continue any cannabis activity in the City, without timely paying in full all fees and charges required for the operation of a cannabis business. Fees and charges associated with regulation of a cannabis business shall be established by resolution of the City Council which may be amended from time to time.

Section 6.36.210. Packaging and Labeling.

All cannabis, cannabis products, and cannabis accessories sold by a cannabis business shall be packaged, labeled and placed in tamper-evident packaging which at least meets the requirements of the MAUCRSA and all state implementing rules and regulations.

Section 6.36.220 Diversion Prohibited.

No person shall give, sell, distribute, or otherwise transfer any cannabis from a permitted cannabis business to any person in any manner that violates local or state law.

Section 6.36.230 Emergency Contact.

Each cannabis business shall provide the Police Chief or designee(s) with the name, telephone number (both landline and mobile, if available) of at least one 24-hour on-call designated employee to serve as a liaison to resolve complaints, to respond to operating problems or concerns associated with the cannabis business, and to notify the Police Chief of any security issues arising per the terms of Section 6.36.180 (a) vii.

Section 6.36.240 Community Relations Manager.

Each cannabis business shall provide the Police Chief or designee(s) with the name, telephone number (both landline and mobile, if available) of at least one employee to communicate with surrounding neighborhoods and businesses. The cannabis business shall make good faith efforts to encourage neighborhood residents to call this person to solve problems, if any, before any calls or complaints are made to the City.

Section 6.36.250 Payment of Taxes.

All cannabis businesses 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 state and local law. Each cannabis business shall cooperate with the City or designee(s) with respect to any reasonable request to audit the 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.

Section 6.36.260 Employee Permit Requirement

- (a) It shall be unlawful for any cannabis business Permittee to employ any person or allow a person to volunteer who is not the holder of a valid City cannabis employee permit.
- (b) All managers and staff of a cannabis business permittee must retain a copy of the City-issued cannabis employee permit and make it available to City officials upon request.

Section 6.36.270 Cannabis Consumption Prohibited.

No cannabis business permittee shall allow any person to smoke, ingest, or otherwise consume cannabis or cannabis products in any form on, or within 20 feet of, the premises.

Section 6.36.280 Persons Under 21 years of Age Prohibited.

Persons under the age of twenty-one (21) years shall not be allowed on the premises of any cannabis business, unless otherwise provided in this Chapter. It shall be unlawful and a violation of this Chapter for any person to employ any person at a commercial cannabis business who is not at least twenty-one (21) years of age.

Section 6.36.290 Site Management.

- (a) The cannabis business permittee shall prevent and eliminate conditions on the site that constitute a nuisance.
- (b) The cannabis business permittee shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.
- (c) The cannabis business permittee shall implement measures that discourage loitering near the business and shall collaborate with the City Police Department to enforce related laws.
- (d) The permittee shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations.
- (e) Notwithstanding any provisions of this Code to the contrary, the permittee shall remove all graffiti from the site and parking lots under the control of the permittee within 72 hours of its application.

Section 6.36.300 Reporting Criminal Activity.

A cannabis business permittee shall immediately report to the City Police Department all criminal activity occurring on the cannabis business site.

Section 6.36.310 Display of Permit and City Business License.

The original copy of the City cannabis business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the cannabis business in a location readily-visible to all persons entering the premises.

Section 6.36.320 Miscellaneous Operating Requirements.

- (a) Cannabis businesses may operate only during the hours specified in the conditional use permit issued by the City. The hours of operation provided in the conditional use permit shall not exceed the hours of operation allowed under state law.
- (b) No cannabis, cannabis products, graphics depicting cannabis, or cannabis products shall be visible from the exterior of any property issued a cannabis business permit, or on any of the vehicles owned or used as part of the cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- (c) Reporting and Tracking of Product and of Gross Sales. Each 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. Said tracking system must be in compliance with state's designated track-and-trace system. 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 Police Chief or designee(s) prior to being used by the permittee.
- (d) Odor Control. Odor control devices and techniques shall be incorporated in all 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 facility, 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, cannabis businesses must install and take all measures, including installing equipment, to control odor as required by the Development Services Director or designee.

Article 4. – Operating Procedures for Specific Business Types

Section 6.36.330. Commercial Cannabis Cultivation Permit Requirements

- (a) No person shall operate a cannabis cultivation business in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued. This section shall not apply to the cultivation of cannabis for personal use allowed under state law.
- (b) Permit Fee. A cannabis cultivation permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.
- (c) Cannabis Business Permit(s) will only be issued for the following types of cannabis cultivation businesses:
 - i. Specialty Cottage – Indoor cultivation up to 500 square feet of total canopy size on one cultivation site.

- ii. Specialty - Indoor cultivation of less than or equal to 5,000 square feet of total canopy size on one cultivation site.
 - iii. Small - Indoor cultivation between 5,001 and 10,000 square feet of total canopy size on one cultivation site.
 - iv. Medium – Indoor cultivation between 10,001 and 22,000 square feet of total canopy size on one cultivation site.
- (d) Indoor Only. A cannabis cultivation permittee shall only cultivate cannabis in a fully enclosed building. Outdoor cultivation of commercial cannabis is expressly prohibited.
- (e) A cannabis cultivation permittee shall not allow cannabis or cannabis products on the cultivation site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
- (f) A cannabis cultivation permittee may conduct all activities permitted by the State License.
- (g) Any cultivation activity that will be conducted by the permittee shall be included on the permit application. No additional cultivation activity can be conducted without applying for and receiving written permission from the City for that additional activity.
- (h) At all times, the cannabis cultivation site shall be compliant with all state regulations for cannabis cultivation including Title 3 of the California Code of Regulations as may be amended.
- (i) Inspections by the Fire Chief or designee may be conducted any time during the business's regular business hours.
- (j) Site Requirements. A cannabis cultivation site shall comply with the following requirements:
- i. Entrances. All entrances into the buildings on the cultivation site shall be locked at all times with entry controlled by the permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - ii. Cultivation area. All cultivation areas in any building on the cultivation site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee from the lobby area. As such, managers and staff of the permittee shall not be required to exit the building in an emergency through the cultivation area.
 - iii. Transport area. Each building with a cultivation area shall have an area designed for the secure transfer of cannabis from a vehicle to the cultivation area.
 - iv. Storage area. Each building with a cultivation area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (k) Signage. A cannabis cultivation permittee shall post in the lobby of the cultivation site signs that state the following:
- i. "This site is not open to the public."
 - ii. "Retail sales of any goods and services is prohibited."
 - iii. "Persons under 21 years of age are prohibited from entering this site."
 - iv. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."

- v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the cultivation site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (l) Restricted Site. No cannabis cultivation permittee shall open their cultivation site to the public.
- i. No cannabis cultivation permittee shall allow anyone on the cultivation site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the cultivation site at all times that any other person, except for security guards, is on the site.
 - iii. While on the cultivation site, managers and staff of the cannabis cultivation business must maintain evidence of their cannabis employee permit, issued by the City, at all times.
 - iv. Any person other than managers or staff who are on the cultivation site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
 - v. Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis cultivation site.
 - vi. Cannabis cultivation sites shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
 - vii. Location Requirements. Cannabis cultivation permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.340. Cannabis Distribution Permit Requirements

- (a) Permit Required. No person shall operate a cannabis distribution business in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.
- (b) Permit Fee. A cannabis distribution permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.
- (c) Cannabis Business Permit(s) will only be issued for the following types of cannabis distribution businesses:
- i. Distributor (Type 11): Purchases, sells, arranges for testing, conducts quality assurance review of packaging and labeling, transports cannabis goods between licensees, and collects state cultivation tax from licensed cultivators.
 - ii. Distributor- Self-Distribution Only (Type 13): Transports only its own cannabis goods that it has cultivated or manufactured to testing facilities and retailers.
 - iii. Distributor- Transport Only (Type 13): Transports cannabis goods between licensees, but may not transport any cannabis goods, except for immature cannabis plants and/or seeds, to a retailer or to the retailer portion of a microbusiness.
- (d) The buildings on the sites of a Type-11 or Type-13 cannabis distribution permittee must comply with the following requirements:

- i. Entrances. All entrances into the buildings on the distribution site must be locked at all times with entry controlled by the cannabis distribution permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- ii. Main entrance and lobby. The distribution site must have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance must be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there must be a lobby to receive persons into the site and to verify whether they are allowed in the areas where cannabis or cannabis products are stored.
- iii. Storage area. The distribution site must have adequate storage space for cannabis and cannabis products being distributed. All storage areas in any building on the distribution site must be separated from the main entrance and lobby and must be secured by a lock accessible only to managers and employees from the lobby area.
- iv. Transport area. Each building with a storage area must have an area designed for the secure transfer of cannabis between a vehicle and the distribution site.

(e) Storage of cannabis and cannabis products.

- i. Type-11 and Type-13 (Self-Distribution Only) cannabis distribution permittees shall only store cannabis or cannabis products in a secured room within a limited access area that is covered by video cameras, in a fully enclosed building on the distribution site. No cannabis or cannabis products in possession of the cannabis distribution business may be stored in any other facility, such as a separate storage facility or a cannabis product manufacturing facility.
- ii. Type-11 and Type-13 (Self Distribution Only) cannabis distribution permittees shall not allow cannabis or cannabis products on the distribution site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
- iii. Type-13 (Transport Only) cannabis distribution permittees shall not store cannabis or cannabis products on the distribution site.

(f) Transportation. The cannabis distribution business shall use and maintain computer software to record the following information relating to the transportation of cannabis and cannabis products:

- i. A shipping manifest that includes a specific description of the items being transported, whether each item is a medical cannabis or adult-use cannabis product, and the name, address, and license number of the cannabis business to which the items are to be transported;
- ii. The name of the person who transported the items;
- iii. The date and time of the transport; and
- iv. The name of the manager of the cannabis business who confirmed receipt of the items.
- v. A person transporting cannabis or cannabis products on behalf of a cannabis distribution business shall carry the following items:
 - A. A copy of the distributor's current cannabis distribution business permit;
 - B. The person's government-issued identification;
 - C. Evidence of the person's City-issued cannabis employee permit; and
 - D. A copy of the shipping manifest as described in subsection (f) i.

- vi. Upon demand of a peace officer or city employee authorized to enforce this chapter, a person transporting cannabis or cannabis products pursuant to this section shall present the items listed in subsection (f) v. for examination.
 - vii. No person shall transport cannabis or cannabis products to anyone except a lawfully operated cannabis business. The person transporting the cannabis or cannabis products shall obtain a signature from a manager of the cannabis business confirming receipt of the items listed in the shipping manifest, before leaving the items.
 - viii. A cannabis business shall maintain the information described in subsection (f) v. for at least three years on the site and shall produce the information upon request by the City.
- (g) **Restricted Site.** No cannabis distribution permittee shall open their distribution site to the public.
- i. No cannabis distribution permittee shall allow anyone on the distribution site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the distribution site at all times that any other person, except for security guards, is on the site.
 - iii. While on the distribution site, managers and staff of the cannabis distribution business must maintain evidence their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the distribution site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
- (h) **Signage.** A cannabis distribution permittee shall post in the lobby of the distribution site signs that state the following:
- i. "This site is not open to the public."
 - ii. "Retail sales of any goods and services is prohibited."
 - iii. "Persons under 21 years of age are prohibited from entering this site."
 - iv. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the distribution site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (i) **Retail Sales Prohibited.** No person shall conduct any retail sales of any good or services on or from a permitted cannabis distribution site.
- (j) **Location Requirements.** Cannabis distribution permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.350 Cannabis Manufacturing Permit Requirements.

(a) No person shall operate a cannabis manufacturing business in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) **Permit Fee.** A cannabis manufacturing permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) Cannabis Business Permit(s) will only be issued for the following types of cannabis manufacturing businesses:

- i. Type 6 (non-volatile), for a business involving all aspects of a cannabis manufacturing business, including the extraction of substances from a cannabis plant and the activities allowed with a Type N and Type P permit as described below.
- ii. Type N, for a business involving the production and preparation of cannabis products (such as infusing cannabis extracts or concentrates into edibles and topicals) and the activities allowed with a Type P permit as described below. A business holding a Type N permit cannot engage in the extraction of substances from a cannabis plant.
- iii. Type P, for a business involving only the packaging and labeling of cannabis or cannabis products. A business holding a Type P permit cannot engage in the extraction of substances from a cannabis plant, or the production and preparation of cannabis products.

(d) **Indoor Only.** A cannabis manufacturing permittee shall only manufacture cannabis in a fully enclosed building. Outdoor manufacturing of cannabis is expressly prohibited.

(e) A cannabis manufacturing permittee shall not allow cannabis or cannabis products on the manufacturing site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

(f) A cannabis manufacturing permittee may conduct all activities permitted by the State License. This includes, but is not limited to, non-volatile extractions, repackaging and relabeling, and infusions.

(g) Any manufacturing activity that will be conducted by the permittee shall be included on the permit application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City for that additional activity.

(h) At all times, the cannabis manufacturing facility will be compliant with all state regulations for cannabis manufacturing including California Health and Safety Code 11362.775 and as it may be amended.

(i) Inspections by the Fire Chief or designee may be conducted any time during the business's regular business hours.

(j) **Site Requirements.** A cannabis manufacturing site shall comply with the following requirements:

- v. **Entrances.** All entrances into the buildings on the manufacturing site shall be locked at all times with entry controlled by the permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- vi. **Manufacturing area.** All manufacturing areas in any building on the manufacturing site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee from the lobby area.
- vii. **Transport area.** Each building with a manufacturing area shall have an area

- designed for the secure transfer of cannabis from a vehicle to the manufacturing area.
- viii. Storage area. Each building with a manufacturing area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (k) Signage. A cannabis manufacturing permittee shall post in the lobby of the manufacturing site signs that state the following:
- vii. "This site is not open to the public."
 - viii. "Retail sales of any goods and services is prohibited."
 - ix. "Persons under 21 years of age are prohibited from entering this site."
 - x. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - xi. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the manufacturing site.
 - xii. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (l) Restricted Site. No cannabis manufacturing permittee shall open their manufacturing site to the public.
- i. No cannabis manufacturing permittee shall allow anyone on the manufacturing site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and distribution drivers.
 - ii. A manager must be on the manufacturing site at all times that any other person, except for security guards, is on the site.
 - iii. While on the manufacturing site, managers and staff of the cannabis manufacturing business must maintain evidence of their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the manufacturing site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
 - vi. Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis manufacturing site.
 - vii. Cannabis manufacturing sites shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.
- (m) Location Requirements. Cannabis manufacturing permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.360 Cannabis Microbusiness Permit Requirements

- (a) No person shall operate a cannabis microbusiness in the City without a valid cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis microbusiness permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) All cannabis commercial activity that will be conducted by the permittee shall be included on the permit application. No additional cannabis activity can be conducted without applying for and receiving written permission from the City for that additional activity. Microbusinesses will count towards dispensary limit unless otherwise directed by the City Council.

(d) Location Requirements. Cannabis microbusiness permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.370 Cannabis Non-Storefront (Delivery Only) Retailer Permit Requirements.

(a) Permit Required. No person shall operate a cannabis delivery only business in the City (without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis delivery-only permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) Permissible Delivery Locations and Customers. Cannabis delivery-only retailers are subject to the following requirements:

- i. Cannabis, cannabis products and cannabis accessories shall only be delivered to customers located at a residential address including a nursing or assisted living facility;
- ii. The delivery of Cannabis, cannabis products and cannabis accessories to any location or facility owned, leased or occupied by a public agency, including but not limited to, a public school, library, and community center, is expressly prohibited;
- iii. No deliveries shall be conducted on private property open to the public, including but not limited to, business and professional offices, retail stores and their adjoining parking lots, places of assembly, eating and drinking establishments.

(d) All cannabis and cannabis products being delivered shall be obtained from the site of the cannabis business that is authorized to deliver cannabis. No cannabis or cannabis products may be delivered from any other facility, such as a separate storage facility or a cannabis product manufacturing facility.

(e) No person delivering cannabis, cannabis products and cannabis accessories shall possess more than \$3,000 worth of cannabis and cannabis products at any time.

(f) The cannabis delivery only business shall use and maintain computer software to record the following information relating to each delivery:

- i. A delivery request that includes the date of the request, the full name of the person requesting the delivery, a specific description of the items requested, whether each item is a medical cannabis or adult-use cannabis product, and the address to which the items are to be delivered;

- ii. The name of the person who delivered the items; and
- iii. The date and time of the delivery.

(g) A person delivering cannabis or cannabis products on behalf of a cannabis non-storefront retailer shall carry the following items:

- i. A copy of the dispensary's current dispensary permit;
- ii. The person's government-issued identification;
- iii. Evidence of the person's City-issued cannabis employee permit; and
- iv. A copy of the delivery request as described in subsection (f).

(h) Upon demand of a peace officer or City employee authorized to enforce this chapter, a person delivering cannabis or cannabis products pursuant to this section shall present the items listed in subsection (g) for examination.

(i) No person shall deliver cannabis to anyone except the person who requested the delivery. The person delivering the cannabis shall confirm compliance with sections 6.36.370 (g) (medical cannabis dispensing operations) and 6.36.370(f) (adult-use cannabis dispensing operations), as applicable, by inspecting the relevant identification and documentation before handing the cannabis or cannabis product to the customer.

(j) A cannabis delivery-only retailer shall maintain the information described in subsection (f) for at least three years on the site and shall produce the information to the city upon request.

(k) **Delivery-Only Vehicle Requirements.** Prior to commencing operations, a Cannabis Non-Storefront Retailer shall provide the City with all information requested by the Police Chief or designee(s) regarding the vehicles used to deliver cannabis to customers. Such information shall include, but not be limited to the following:

- i. Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.
- ii. Proof of insurance as required in section 6.36.140 (b) for any and all vehicles being used to deliver cannabis or cannabis products.
- iii. The make, model, color, and license number of all vehicles owned or leased by the commercial cannabis retailer and used to deliver cannabis or cannabis products.

(l) **Retail Sales Prohibited.** No person shall conduct any retail sales of any good or services on or from a permitted cannabis delivery-only retailer site.

(m) **Location Requirements.** Cannabis non-storefront retail permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.380 Cannabis Storefront (Dispensary) Retailer Permit Requirements.

(a) **Permit Required.** No person shall operate a cannabis storefront retailer in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) **Permit Fee.** A cannabis storefront retailer permit program fee is established and imposed. The City Council shall establish by resolution the amount of the cannabis business permit fee for a storefront retailer and any related penalties.

(c) **Operating Hours.** The maximum hours of operation for a cannabis storefront retailer shall be established by the conditional use permit issued by the City, provided that the hours shall not exceed the maximum hours of operation allowed under state law.

(d) **Indoor Operations Only.** A cannabis storefront retailer permittee shall not allow cannabis, cannabis products, or cannabis accessories on the dispensary site to be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

(e) **Restricted Access to Cannabis Storefront Retailer Premises.** An A-licensee shall not allow any person under 21 years of age access to a licensed cannabis dispensary, unless the A-licensee also holds an M-license and the licensed premises for the A-license and M-license are the same. A M-licensee may allow access to a licensed cannabis dispensary to any person 18 years of age or older who possesses a valid government-issued identification card and either a valid county-issued identification card under Section 11362.712 of the California Health and Safety Code, or who is a qualified patient in possession of a valid physician's recommendation in their name, or who is a primary caregiver for a person in possession of a valid physician's recommendation, or any person 21 years of age or older, if the M-licensee holds an A-license and the licensed premises for the M-license and A-license are the same.

(f) **Adult Use Only.** A cannabis storefront retailer with an A-license from the State shall only sell adult-use cannabis to persons who are 21 years of age or older, and who are in possession of a valid government-issued identification card.

(g) **Medical Cannabis Dispensing Operations.** A cannabis retailer that is expressly authorized to sell medical cannabis pursuant to this Chapter and state law shall sell medical cannabis only to:

- i. A person 18 years of age or older who possesses a valid government-issued identification card and either a valid county-issued identification card under Section 11362.712 of the California Health and Safety Code; or
- ii. Qualified patients with a currently valid physician's recommendation in compliance with the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code section 11362.7 et seq.), and valid government-issued identification such as a Department of Motor Vehicles driver's license or State Identification Card; or
- iii. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code section 11362.7 et seq.), and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.
- iv. No cannabis business that is expressly authorized to sell medical cannabis pursuant to this chapter shall have a physician on the dispensary site to evaluate patients or provide a recommendation for medical cannabis.

(h) Maintenance of Medical Cannabis Records. A cannabis retailer shall maintain records of the following information for each member and customer of the dispensary that purchases medical cannabis:

- i. The name, date of birth, physical address, and telephone number; and their status as a qualified patient or primary caregiver.
- ii. A copy of each qualified patient's written physician recommendation and their designation of a primary caregiver.
- iii. These records shall be maintained by the cannabis retailer for a period of not less than three years and shall be produced to the city within 24 hours after receipt of the City's request.
- iv. The storefront cannabis dispensary shall report any loss, damage or destruction of these records to the Police Chief within 24 hours of the loss, damage or destruction.

(i) Cannabis Accessories. A cannabis dispensary that is expressly authorized to sell cannabis pursuant to this chapter, whether medical cannabis or adult-use cannabis, may also sell cannabis accessories and display cannabis accessories.

(j) Restrictions on Alcoholic Beverages. No storefront cannabis dispensary or manager shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages; or operate a business on or adjacent to the dispensary site that sells alcoholic beverages.

(k) Site Requirements.

- i. Floor Plan. A cannabis storefront retailer must have a lobby waiting area at the entrance to receive persons to verify that they are members of that dispensary or are otherwise allowed to be on the dispensary site. A dispensary must also have a separate and secure area designated for selling cannabis, cannabis products, and cannabis accessories to its customers, provided that such secured areas do not violate the emergency egress requirements in the Building Code. The main entrance must be located and maintained clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets or sidewalks.
- ii. Storage. A cannabis storefront retailer must have adequate locked storage on the dispensary site, identified and approved as a part of the security plan, for after-hours storage of cannabis and cannabis products. Cannabis and cannabis products must be stored at the dispensary site in secured rooms that are completely enclosed and do not violate the emergency egress requirements in the Building Code or in a safe that is bolted to the floor.

(l) Signage. A cannabis storefront retailer shall post in the lobby of the dispensary site signs that state the following:

- i. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
- ii. A cannabis storefront retailer that is only authorized to sell medical cannabis must have a sign stating, "Medical cannabis sales only. Only qualified patients and primary caregivers may enter. Any qualified patient or primary caregiver under 18 years of age must be in the presence of their parent or legal guardian."
- iii. A cannabis storefront retailer that is only authorized to sell adult-use cannabis must have a sign stating, "Adult-use cannabis sales only. Persons under 21 years of age are prohibited from entering."

- iv. A cannabis storefront dispensary that is authorized to sell both medical and adult-use cannabis must have a sign stating, "Medical and adult-use cannabis for sale. Persons under 21 years of age are prohibited from entering this property unless they are a qualified patient or a primary caregiver. Any qualified patient or primary caregiver under 18 years of age must be in the presence of their parent or legal guardian." If separate rooms are provided for medical cannabis and adult-use cannabis, the signs may be posted next to each room as appropriate.
- v. Each sign described in must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons in the normal course of a transaction.
- vi. The signs must not obstruct the entrance or windows of the dispensary.
- vii. Each sign shall comply with California's accessibility requirements for persons with visual impairments.

(m) **Restricted Site.**

- i. All entrances into a storefront cannabis dispensary's building shall be locked from the exterior at all times with entry controlled by dispensary personnel, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- ii. A manager must be on the dispensary site at all times that any other person, except for security guards, is on the site.
- iii. While on the dispensary site, managers and staff of the cannabis dispensary permittee must maintain evidence of their City-issued cannabis employee permit at all times.
- iv. Any person other than managers or staff who are on the dispensary site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.

(n) **Cannabis Cultivation Prohibited.** No cannabis storefront dispensary shall grow or cultivate cannabis, except for immature nursery stock cannabis plants, on the dispensary site.

(o) **Location Requirements.** Cannabis storefront retail permittees shall locate in a site consistent with Section 10.08.3196.

Section 6.36.390 Cannabis Testing Laboratory Requirements.

(a) **Permit Required.** No person shall operate a cannabis testing laboratory business in the City without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) **Permit Fee.** A cannabis testing laboratory permit program fee is established and imposed. The City Council shall establish by resolution the amount of the cannabis business permit fee for a cannabis testing laboratory and any related penalties.

(c) **Indoor Testing Only.** A cannabis testing laboratory permittee shall only test cannabis in a fully enclosed building.

(d) **Site Requirements.** A cannabis testing laboratory site shall comply with the following requirements:

- i. Entrances. All entrances into the buildings on the laboratory site shall be locked at all times with entry controlled by the cannabis testing laboratory permittee's managers and staff, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - ii. Testing area. All testing areas in any building on the laboratory site shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the cannabis testing laboratory permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
 - iii. Transport area. Each building with a testing area shall have an area designed for the secure transfer of cannabis from a vehicle to the testing area.
 - iv. Storage area. Each building with a testing area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby, and shall be secured by a lock accessible only to managers and staff of the cannabis testing laboratory permittee, provided that such secured areas do not violate the emergency egress requirements in the Building Code.
- (e) Signage. A cannabis testing laboratory permittee shall post in the lobby of the laboratory site signs that state the following:
- i. "This site is not open to the public."
 - ii. "Retail sales of any goods and services is prohibited."
 - iii. "Persons under 21 years of age are prohibited from entering this site."
 - iv. "Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited."
 - v. Each sign must be at least 8 inches by 10 inches in size and must be displayed at all times in a conspicuous place so that it may be readily seen by all persons entering the testing site.
 - vi. Each sign shall comply with California's accessibility requirements for persons with visual impairments.
- (f) Restricted Site. No cannabis testing laboratory permittee shall open their laboratory site to the public.
- i. No cannabis testing laboratory permittee shall allow anyone on the laboratory site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters.
 - ii. A manager must be on the laboratory site at all times that any other person, except for security guards, is on the site.
 - iii. While on the laboratory site, managers and staff of the cannabis testing laboratory permittee must maintain evidence of their City-issued cannabis employee permit at all times.
 - iv. Any person other than managers or staff who are on the laboratory site must sign in, wear a visitor badge, and be escorted on the site by a manager, or designee, at all times.
- (g) Retail Sales Prohibited. No person shall conduct any retail sales of any good or services on or from a permitted cannabis testing laboratory site.
- (h) Location Requirements. Cannabis testing laboratory permittees shall locate in a site consistent with Section 10.08.3196.

Article 5. – Enforcement.

Section 6.36.400. Promulgation of Regulations, Requirements, Standards and Other Legal Duties.

(a) In addition to any regulations adopted by the City Council, the City Manager or designee is authorized to establish any additional regulations, requirements, and standards governing the issuance, denial or renewal of cannabis business permits; the operation of cannabis businesses that are necessary to protect the public health, safety and welfare; and the City's oversight of cannabis businesses, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter. Such regulations, requirements or standards shall take effect as determined by the City Manager or designee, and existing cannabis business permit holders shall comply as amended.

(b) Regulations shall be published on the City's website.

(c) Regulations promulgated by the City Manager or designee shall become effective as determined therein. Cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager or designee.

Section 6.36.410. Fees Deemed Debt to City of Tracy.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City of Tracy that is recoverable via an authorized administrative process as set forth in the Tracy Municipal Code, or in any court of competent jurisdiction.

Section 6.36.420. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Tracy, whether committed by the permittee or any employee, volunteer, or agent of the permittee, which violations occur in or about the premises of the cannabis business, and violations which occur during deliveries to off-site locations, whether or not said violations occur within the permit holder's presence.

Section 6.36.430. Inspection and Enforcement.

(a) The City Manager or designee(s), Chief of Police or designee(s), and Fire Chief or designee(s) charged with enforcing the provisions of the Tracy Municipal Code, or any provision thereof, may enter the location of a cannabis business during normal business hours, without notice, and inspect the location of any cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.

(b) It is unlawful for any person having responsibility over the operation of a cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other

documents required to be maintained by a cannabis business under this Chapter or under state or local law.

Section 6.36.440. Compliance with State Regulations.

It is the stated intent of this Chapter to regulate commercial cannabis activity in the City of Tracy in compliance with all provisions MAUCRSA and any subsequent state legislation.

Section 6.36.450. Violations Declared a Public Nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

Section 6.36.460. Each Violation a Separate Offense.

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Tracy Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, and any permit issued pursuant to this Chapter shall be deemed null and void, entitling the City to disgorgement and payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity, including the imposition of a civil penalty not to exceed one thousand dollars (\$1000) for each day, or part thereof, such violation or failure to comply occurs. The City of Tracy may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the cannabis business or persons related to, or associated with, the commercial cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the Police Chief or designee(s), may take immediate action to temporarily suspend a cannabis business permit issued by the City, pending a hearing before the City Manager.

Section 6.36.470. Criminal Penalties.

Each and every violation of the provisions of this Chapter may be prosecuted as a misdemeanor at the discretion of the City Attorney and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 6.36.480. Remedies Cumulative and Not Exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

Section 6.36.490 Service of Notices.

All notices required by this chapter are deemed issued and served upon the date they are either deposited in the United States mail, postage pre-paid, addressed to the applicant or cannabis business at the mailing address identified in its application, the last updated address on file with the City Manager's office, or the mailing address on the appeal form; or the date upon which personal service of the notice is provided to the applicant or a manager identified on the application or appeal form.

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EXHIBIT 33

ORDINANCE 1278

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.3196 OF CHAPTER 10.08 "ZONING REGULATIONS" OF TITLE 10 "PLANNING AND ZONING" OF THE TRACY MUNICIPAL CODE TO ESTABLISH LAND USE RESTRICTIONS ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

WHEREAS, In November 1996, California voters approved the Compassionate Use Act of 1996 ("CUA") which authorized a limited defense to criminal charges for the use, possession or cultivation of marijuana (cannabis) for medical purposes when a qualified patient has a doctor's recommendation for the use of cannabis, and

WHEREAS, In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized the use of non-medicinal (recreational) cannabis by adults and the cultivation of up to six cannabis plants for personal use; and the AUMA also created a statewide regulatory framework for the cultivation, production, and sale of non-medical cannabis for adult use, and

WHEREAS, In June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity titled Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and

WHEREAS, CUA, AUMA and MAUCRSA do not prohibit cities from enacting regulations regarding commercial cannabis activities and uses, and

WHEREAS, The City Council seeks to establish land use regulations for commercial cannabis activity in the City of Tracy to ensure such activities are conducted in a manner that mitigates negative impacts, protects the public health safety, and welfare of residents, and supports economic development, and

WHEREAS, The City of Tracy engaged in a comprehensive review and study of state and local cannabis regulations, conducted community outreach on this topic, and held various public meetings to discuss, provide policy direction to staff, and receive public input on the topic of commercial cannabis activity, and

WHEREAS, This amendment seeks to establish zoning and locational requirements on commercial cannabis activity to ensure that these uses are compatible with the City's General Plan and zoning restrictions.

WHEREAS, The Planning Commission considered this matter at a duly noticed public hearing held on October 23, 2019 and recommended that the City Council approve the proposed amendments to Section 10.08.3196, and

WHEREAS, The City Council considered this ordinance at a duly noticed public hearing held on November 5, 2019.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings.

SECTION 2. The City Council hereby amends Section 10.08.3196 as shown in Exhibit "A".

SECTION 3. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 5. The City Council finds that this Ordinance is exempt from CEQA in accordance with Business and Professions Code section 26055(h) because it requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

SECTION 6. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk's office at least five days before the ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

* * * * *

The foregoing Ordinance 1278 was introduced at a regular meeting of the Tracy City Council on the 19th day of November 2019, and finally adopted on the 3rd day of December, 2019, by the following vote:

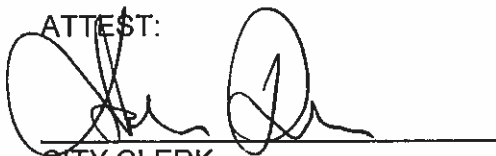
AYES: COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:

CITY CLERK

THE FOREGOING DOCUMENT IS CERTIFIED
TO BE A CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

BY:  CITY CLERK, CITY OF TRACY
DATE: 2/27/2020

Chapter 10.08 - Zoning Regulations

10.08.3196 – Cannabis Uses.

- (a) **Purpose and Intent.** The purpose of this section is to impose zoning restrictions on commercial and personal cannabis activities or uses. This section is not intended to give any person or entity authority to conduct commercial cannabis activities in the City of Tracy. If a commercial cannabis use is not specifically permitted in this Chapter it is not allowed in any zoning district within the City.
- (b) **Definitions.** Unless otherwise provided in this section, the definitions set forth in Chapter 10.08 (Zoning Regulations) and Chapter 6.36 (Commercial Cannabis Activity) apply. The following words shall have the meanings set forth below when used in this section:
- (1) "Day care center" means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers, as well as child care centers pursuant to Section 1596.951 of the California Health and Safety Code. This definition shall have the same meaning as set forth in Section 1596.76 of the California Health and Safety Code, as the same may be amended from time to time.
 - (2) "Fully enclosed and secure structure" means a space within a building, greenhouse, or other structure that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, and which is accessible only through one or more lockable doors.
 - (3) "Outdoors" means any location within the City of Tracy that is not within a fully enclosed and secure structure or private residence, as defined by California Health and Safety Code section 11362.2.
 - (4) "Personal use" shall mean an individual's personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with state law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended from time to time. Personal use does not include any commercial activity.
 - (5) "School" means those sites upon which full-time instruction in any of the grades K through 12 is provided where the primary purpose is education, as determined in the sole discretion of the Planning Commission. "School" includes public schools, private schools, and charter schools, but does not include any private site upon which education is primarily conducted in private homes.
 - (6) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to: private youth membership organizations or clubs, social service teenage club facilities, video arcades where ten (10) or more video games or game machines or devices are operated, and where minors are legally permitted to accept services, or similar amusement park facilities. It shall also include a park, playground or recreational area

specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or in City, county, or state parks. This definition shall not include any private gym, martial arts, yoga, ballet, music, art studio or similar studio of this nature, nor shall it include any athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.

(c) Commercial Cannabis Uses.

- (1) All commercial cannabis uses are prohibited from operating in all zoning districts in the City, except as expressly permitted in this section as well as Chapter 6.36.
- (2) All commercial cannabis uses permitted by this section must, prior to establishing and commencing operations, obtain and maintain a City cannabis business permit pursuant to Chapter 6.36 and any other state or local license or permit, as applicable.
- (3) The following commercial cannabis uses are permitted to establish as a conditional use on property in the following zoning districts, subject to the granting of and compliance with terms of a City cannabis business permit pursuant to Chapter 6.36 and a conditional use permit issued pursuant to Section 10.08.4250:

(i) Storefront Retailer (dispensary):

a. Commercial Zone Districts:

Tracy Hills Specific Plan – General Highway Commercial (GHC-TH)

Tracy Hills Specific Plan – Mixed Use Business Park (MUBP-TH)

Residential Areas Specific Plan – Neighborhood Shopping (NS)

Residential Areas Specific Plan - General Highway Commercial (GHC)

Industrial Areas Specific Plan – Neighborhood Shopping (NS)

Industrial Areas Specific Plan – Village Center (VC)

Industrial Areas Specific Plan – Flex Office (FO)

Ellis Specific Plan – Limited Use (LU)

Ellis Specific Plan – Village Center (VC)

Northeast Industrial Areas Specific Plan – General Commercial (GC)

I-205 Corridor Specific Plan – Commercial Center (CC)

I-205 Corridor Specific Plan – Freeway Commercial (FC)
I-205 Corridor Specific Plan – General Commercial (GC)
I-205 Corridor Specific Plan – General Commercial 2 (GC2)
I-205 Corridor Specific Plan –Service Commercial (SC)
Cordes Ranch Specific Plan – General Commercial (GC)
Community Shopping Center (CS)
Neighborhood Shopping Center (NS)
General Highway Commercial (GHC)
Highway Service (HS)
Central Business District (CBD)
Community Recreation Support Zone (CRS)
Planned Unit Development –West Clover Rd (City Council ordinance 789 c.s.)
Planned Unit Development - Southeast corner of Grantline Road and Corral Hollow Road (City Council ordinance 697 c.s.)
Planned Unit Development – Northwest corner of 6th Street and C Street (City Council Resolution 2012-053)
Planned Unit Development – northwest corner of 11th Street and East Street (City Council ordinance 742 c.s.)

b. Industrial Zone Districts:

Tracy Hills Specific Plan – Light Industrial (M1-TH)
Industrial Areas Specific Plan – General Industrial (GI)
Industrial Areas Specific Plan – Limited Industrial (LI)
Northeast Industrial Areas Specific Plan – Light Industrial (LI)
I-205 Corridor Specific Plan – Light Industrial (LI)
Cordes Ranch Specific Plan – Business Park Industrial (BPI)
Light Industrial – M1
Heavy Industrial – M2

Planned Unit Development – West Larch Road (City Council ordinance 1083)

- (ii) Non-storefront retailer (Delivery), distribution, manufacturing, microbusiness, testing laboratory, indoor cultivation:

- a. Industrial Zone Districts:

- Tracy Hills Specific Plan – Light Industrial (M1-TH)

- Industrial Areas Specific Plan – General Industrial (GI)

- Industrial Areas Specific Plan – Limited Industrial (LI)

- Northeast Industrial Areas Specific Plan – Light Industrial (LI)

- I-205 Corridor Specific Plan – Light Industrial (LI)

- Cordes Ranch Specific Plan – Business Park Industrial (BPI)

- Light Industrial – M1

- Heavy Industrial – M2

- Planned Unit Development – 450 West Larch Road (City Council resolution)

(d) **Location Requirements.**

- (1) Any commercial cannabis use shall be located at least 600 feet from any parcel containing any of the following sensitive uses as of the date the conditional use permit is issued: school, day care center, or youth center; and
- (2) If located on separate parcels, the distance between the commercial cannabis use and the sensitive use property shall be measured from the outer boundaries of the sensitive use parcel to the closest structure containing a cannabis use, and
- (3) If located on the same parcel, the distance between the structures containing the cannabis use and any sensitive use shall be at least 600 feet.

(e) **Cultivation of Cannabis.**

- (1) All outdoor cultivation of cannabis within the City is prohibited, and shall be unlawful, as a principal use, conditional use, special use, or accessory use in any zone.
- (2) The indoor cultivation of cannabis shall comply with Chapter 6.36 and applicable state law. The cultivation of cannabis for personal use shall only be conducted indoor and in accordance with applicable state law.

(f) **Penalties.**

- (1) Violations of this chapter are hereby declared a public nuisance.
- (2) Violations of this section are punishable as misdemeanors and as otherwise set forth in Chapter 1.04 of this Code. Each day of operation of a commercial cannabis business or the outdoor cultivation of marijuana occurs, in violation of this section, constitutes a separate offense.

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EXHIBIT 34

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF AMENDING THE TURLOCK }
MUNICIPAL CODE TITLE 5, CHAPTER 5-21, }
INCLUDING MODIFICATIONS TO SECTION }
5-21-103(e), TO BE CONSISTENT WITH }
STATE STANDARDS CONCERNING }
SENSITIVE USES, SECTION 5-21-104(d)(4), }
TO REQUIRE THE PHYSICAL PRESENCE OF }
A STATE LICENSED SECURITY PERSONNEL, }
AND SECTION 5-21-111(c), TO INCREASE }
THE PENALTY AMOUNT FOR THE SECOND }
AND SUBSEQUENT OFFENSES AND }
CHAPTER 5-14, SECTION 5-14-01; AND }
TITLE 3, CHAPTER 3-1, SECTION 3-1-101, }
TO ESTABLISH A COMMERCIAL CANNABIS }
PILOT PROGRAM AND MAKE NECESSARY }
CHANGES TO THE TURLOCK MUNICIPAL }
CODE }

ORDINANCE NO.1255-CS

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age or older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, on January 24, 2017, the City Council of the City of Turlock ("City Council") adopted Ordinance No. 1230-CS prohibiting all commercial nonmedical cannabis businesses from operating in the City (the "Cannabis Ordinance"); and

WHEREAS, in January, 2019, the Bureau of Cannabis Control, the Department of Agriculture, and the Department of Public Health issued the final regulations relating to all commercial cannabis businesses and uses allowed under state law; and

WHEREAS, the City Council desires to amend the Cannabis Ordinance to establish a Cannabis Business Pilot Program setting forth local regulations for commercial cannabis operations within the City, as permitted and regulated under state law; and

WHEREAS, the City Council finds that this ordinance is in the best interest of the health, welfare, and safety of the public.

BE IT ORDAINED by the City Council of the City of Turlock as follows:

SECTION 1. AMENDMENT: Title 5, Chapter 5-21 is hereby amended to read as follows:

Chapter 5-21 Cannabis Regulations

Article 1. Cannabis Business Pilot Program

Section 5-21-101 Legislative Intent.

It is the intent of the City to establish a cannabis business pilot program to regulate commercial cannabis activities pursuant to state law and to discourage violations of related state law, especially those laws that prohibit the sale, use, or distribution of cannabis and cannabis products to minors. It is not the intent of the City to expand, reduce, or alter the penalties for violations of state cannabis laws.

Section 5-21-102 Definitions.

- A. "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.
- B. "Business" means a profession, trade, occupation, gainful activity, and all and every kind of calling whether or not carried on for profit.
- C. "Cannabis" 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by section 11018.5 of the Health and Safety Code.

- D. "Cannabis business" means any business engaged in commercial cannabis activity. "Cannabis business" does not include any of the following:
1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
 2. 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.
 3. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
 4. A residential hospice or a home health agency licensed pursuant to Chapter 8 and Chapter 8.5 of Division 2 of the Health and Safety Code.
 5. The cultivation, delivery, gift, or furnishing of cannabis by a qualified patient, a primary caregiver, or other person with an identification card as defined by section 11362.7 of Health and Safety Code provided such activity complies strictly with all applicable state law, including, but not limited to, sections 11362.5 and 11362.765 of the Health and Safety Code.
- E. "Cannabis cultivation business" means any cannabis business that, pursuant to a Type 1, Type 1A, Type 1B, Type 1C, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B, Type 4, Type 5, Type 5A, Type 5B, or Type 12 state cannabis license, or their successors, cultivates cannabis or cannabis products.
- F. "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Cannabis delivery" also includes the use by a retailer of any technology platform.
- G. "Cannabis delivery business" means any cannabis business that, pursuant to a Type 10 state cannabis license, or its successors, delivers, makes available, or distributes cannabis and cannabis products to a consumer.
- H. "Cannabis dispensary" means any cannabis business where medicinal or adult-use cannabis or cannabis products are sold at retail, pursuant to a Type 10 state cannabis license, or its successors. A cannabis dispensary includes a cannabis business that provides cannabis deliveries.
- I. "Cannabis distribution business" means any cannabis business that, pursuant to a Type 11 or Type 13 state cannabis license, or their successors, procures, sells, or transports cannabis and cannabis products between cannabis businesses.
- J. "Cannabis manufacturing business" means any cannabis business that, pursuant to a Type 6, Type 7, or Type 12 state cannabis license, or their successors, manufactures cannabis or cannabis products.
- K. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited

to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

- L. "Cannabis testing laboratory" means a cannabis business that tests cannabis or cannabis products pursuant to a Type 8 state cannabis license, or its successors.
- M. "City" means the City of Turlock, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.
- N. "Commercial cannabis activity" includes the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis or cannabis products that requires a state license.
- O. "Commercial cannabis waste" means cannabis plants and plant materials that are discarded by a cannabis business, including, but not limited to, extra vegetative plants, failed clones, and harvest waste.
- P. "Cultivation" means any activity involving the planting, growing, harvesting, processing, drying, curing, grading, or trimming of cannabis.
- Q. "Day care center" means any licensed child day care facility other than a small or large day care home, including infant centers and preschools.
- R. "Employee permit" means the permit required by this chapter for every employee or independent contractor employed by a cannabis business.
- S. "Juvenile" means any natural person who is under the age of eighteen (18) years.
- T. "License" means a state license issued pursuant to Bus. & Prof. Code, § 26000.
- U. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- V. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.
- W. "Primary caregiver" has the same meaning as that term is defined by section 11362.7 of the Health and Safety Code.
- X. "Qualified patient" has the same meaning as that term is defined by section 11362.7 of the Health and Safety Code.

- Y. "School" means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school where education is primarily conducted in private homes.

Section 5-21-103 State and Local Requirements.

- A. Any cannabis business that does not have the applicable state license is prohibited within the City.
- B. Any cannabis business allowed in the City shall obtain all of the following:
 - 1. A development agreement;
 - 2. A city business license; and
 - 3. A conditional use permit.
- C. All cannabis businesses shall maintain compliance with Title 9 of the Turlock Municipal Code.
- D. At the time of application to the City, every cannabis business applicant shall submit a copy of its state license or state license application required for its operation.
- E. Cannabis businesses shall not be located within six hundred (600) feet of any school, day care center, and youth facilities. Other nearby uses such as churches and residential properties which could be impacted shall be evaluated on a case by case basis.

Section 5-21-104 Cannabis Dispensaries.

- A. Up to four (4) cannabis dispensaries may be permitted pursuant to a development agreement and a conditional use permit, subject to the requirements in Title 9 of the Turlock Municipal Code.
- B. Cannabis dispensaries shall only be allowed within fully enclosed buildings.
- C. Any commercial cannabis activity related to delivery is prohibited unless that activity is performed by a cannabis dispensary authorized by this code. The City reserves the right to prohibit a cannabis dispensary from performing delivery services.
- D. All cannabis dispensaries shall maintain all applicable state licenses and comply with all of the following:
 - 1. Floor Plan. A scaled floor plan for each level of each building that makes up the business site, including the entrances, exits, walls, and operating areas.
 - 2. Site Plan. A scaled site plan of the business site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries.

3. Statement of Owner's Consent. Written consent of the owner or landlord of the proposed site to operate a cannabis dispensary, specifying the street address and parcel number.
4. Security.
 - i. Security Surveillance Cameras. Security surveillance cameras and a video recording system shall be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system shall be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the business site. The recording system shall be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.
 - ii. Security Video Retention. Video from the security surveillance cameras shall be recording at all times (twenty-four (24) hours a day, seven (7) days a week) and the recording shall be maintained for at least ninety (90) days. The video recordings shall be made available to the City upon request.
 - iii. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition. The alarm system shall include a private security company that is required to respond to every alarm.
 - iv. Security Personnel. At all times during business hours, cannabis dispensaries shall provide onsite security through the physical presence of a state licensed security guard. All security guards shall be dressed in clothing that easily identifies them as security.
5. Odor Control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent cannabis odors from being detected outside the business site.
6. Tax Compliance. A cannabis dispensary shall maintain any applicable tax certificates and permits, and timely remit any taxes due to the appropriate government entity.
7. Insurance. A cannabis dispensary shall maintain certificates of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
8. Waste Management Plan. A cannabis dispensary shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

Section 5-21-105 Cannabis Cultivation Business.

- A. Cannabis cultivation businesses may be permitted pursuant to a development agreement and a conditional use permit, subject to the requirements in Title 9 of the Turlock Municipal Code.
- B. All commercial Outdoor cultivation is prohibited within the City.

- C. Cannabis cultivation businesses shall maintain all applicable state licenses and comply with all of the following:
1. Floor Plan. A scaled floor plan for each level of each building that makes up the business site, including the entrances, exits, walls, and operating areas. All cultivation and curing areas within a building on the cultivation site shall be separated from the main entrance and lobby and shall be secured by a lock accessible only to managers and staff of the cannabis cultivation business.
 2. Site Plan. A scaled site plan of the business site, including all buildings, structures, driveways, parking lots, landscape areas, boundaries, lights, and canopy areas.
 3. Statement of Owner's Consent. Written consent of the owner or landlord of the proposed site to operate a cannabis cultivation business, specifying the street address and parcel number.
 4. Security.
 - i. Security Surveillance Cameras. Security surveillance cameras and a video recording system shall be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system shall be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the business site. The recording system shall be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.
 - ii. Security Video Retention. Video from the security surveillance cameras shall be recording at all times (twenty-four (24) hours a day, seven (7) days a week) and the recording shall be maintained for at least ninety (90) days. The video recordings shall be made available to the City upon request.
 - iii. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition. The alarm system shall include a private security company that is required to respond to every alarm.
 5. Odor Control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent cannabis odors from being detected outside the business site.
 6. Cultivation Site Restricted. A cannabis cultivation business shall not open their cultivation site to the public. A cannabis business shall not allow anyone on the cultivation site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters. A juvenile shall not be on the cultivation site or operate a cannabis cultivation business in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.

7. **Tax Compliance.** A cannabis cultivation business shall maintain any applicable tax certificates and permits, and timely remit any taxes due to the appropriate government entity.
8. **Insurance.** A cannabis cultivation business shall maintain certificates of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
9. **Waste Management Plan.** A cannabis cultivation business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

Section 5-21-106 Cannabis Testing Laboratory.

- A. Cannabis testing laboratories may be permitted pursuant to a development agreement and a conditional use permit, subject to the requirements in Title 9 of the Turlock Municipal Code.
- B. Cannabis testing laboratories shall meet the accreditation criteria in the International Organization for Standardization (ISO) guidelines known as ISO 17025.
- C. All cannabis testing laboratories shall maintain all applicable state licenses and maintain compliance with all of the following:
 1. **Floor Plan.** A scaled floor plan for each level of each building that makes up the business site, including the entrances, exits, walls, and operating areas.
 2. **Site Plan.** A scaled site plan of the business site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries. The site plan shall comply with all of the following:
 - i. **Entrances.** All entrances into the buildings on the laboratory site shall be locked at all times, with entry controlled by the cannabis testing laboratory business' managers and staff.
 - ii. **Main Entrance and Lobby.** The laboratory site shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the testing areas.
 - iii. **Testing Area.** All testing areas in any building on the laboratory site shall be separated from the main entrance and lobby and shall be secured by a lock accessible only to managers and staff, of the cannabis testing laboratory.
 - iv. **Transport Area.** Each building with a testing area shall have an area designed for the secure transfer of cannabis from a vehicle to the testing area.

- v. Storage area. Each building with a testing area shall have adequate storage space for cannabis that has been tested or is waiting to be tested. The storage areas shall be separated from the main entrance and lobby and shall be secured by a lock accessible only to managers and staff, of the cannabis testing laboratory.
- 3. Statement of Owner's Consent. Written consent of the owner or landlord of the proposed site to operate a cannabis manufacturing business, specifying the street address and parcel number.
- 4. Security.
 - i. Security Surveillance Cameras. Security surveillance cameras and a video recording system shall be installed to monitor all doors into the buildings on the laboratory site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system shall be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the laboratory site. The recording system shall be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.
 - ii. Security Video Retention. Video from the security surveillance cameras shall be recording at all times (twenty-four (24) hours a day, seven (7) days a week) and the recording shall be maintained for at least ninety (90) days. The video recordings shall be made available to the city upon request.
 - iii. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition. The alarm system shall include a private security company that is required to respond to every alarm.
- 5. Odor Control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent cannabis odors from being detected outside the business site.
- 6. Tax Compliance. A cannabis testing business shall maintain any applicable tax certificates and permits, and timely remit any taxes due to the appropriate government entity.
- 7. Laboratory Site Restricted. A cannabis testing laboratory shall not open their laboratory site to the public. A cannabis testing laboratory shall not allow anyone on the laboratory site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there; such as contractors, inspectors, and cannabis transporters. A manager must be on the laboratory site at all times any other person, except for security guards, is on the site. A juvenile shall not be on the laboratory site or operate a cannabis testing laboratory

in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.

8. Insurance. A cannabis testing laboratory shall maintain certificates of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
9. Waste Management Plan. A cannabis testing laboratory shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

Section 5-21-107 Cannabis Manufacturing Business.

- A. Cannabis manufacturing businesses may be permitted pursuant to a development agreement and a conditional use permit, subject to the requirements in Title 9 of the Turlock Municipal Code.
- B. Cannabis manufacturing businesses shall obtain all applicable licenses and maintain compliance with all of the following:
 1. Floor Plan. A scaled floor plan for each level of each building that makes up the business site, including the entrances, exits, walls, and operating areas. All manufacturing areas within a building on the manufacturing site shall be separated from the main entrance and lobby and shall be secured by a lock accessible only to managers and staff of the cannabis manufacturing business.
 2. Site Plan. A scaled site plan of the business site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries.
 3. Statement of Owner's Consent. Written consent of the owner or landlord of the proposed site to operate a cannabis manufacturing business, specifying the street address and parcel number.
 4. Security.
 - i. Security Surveillance Cameras. Security surveillance cameras and a video recording system shall be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system shall be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the manufacturing site. The recording system shall be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.
 - ii. Security Video Retention. Video from the security surveillance cameras shall be recording at all times (twenty-four (24) hours a day, seven (7) days a week) and the recording shall be maintained for at least ninety (90) days. The video recordings shall be made available to the city upon request.

- iii. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition. The alarm system shall include a private security company that is required to respond to every alarm.
- 5. Odor Control. A detailed plan describing the air treatment system, or other methods that will be implemented to prevent cannabis odors from being detected outside the business site.
- 6. Manufacturing Site Restricted. A cannabis manufacturing business shall not open their manufacturing site to the public. A cannabis manufacturing business shall not allow anyone on the manufacturing site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters. A manager must be on the manufacturing site at all times any other person, except for security guards, is on the site. A juvenile shall not be on the manufacturing site or operate a cannabis manufacturing business in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.
- 7. Tax Compliance. A cannabis manufacturing business shall maintain any applicable tax certificates and permits, and timely remit any taxes due to the appropriate government entity.
- 8. Insurance. A cannabis manufacturing business shall maintain certificates of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
- 9. Waste Management Plan. A cannabis manufacturing business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

Section 5-21-108 Cannabis Distribution Business.

- A. Cannabis distribution businesses may be permitted pursuant to a development agreement and a conditional use permit, subject to the requirements in title 9 of the Turlock Municipal Code.
- B. All cannabis distribution businesses shall obtain all applicable state licenses and maintain compliance with all of the following:
 - 1. Floor Plan. A scaled floor plan for each level of each building that makes up the business site, including the entrances, exits, walls, and operating areas. All storage areas within a building on the distribution site shall be separated from the main entrance and lobby and shall be secured by a lock accessible only to managers and staff of the cannabis distribution business.
 - 2. Site Plan. A scaled site plan of the business site, including all buildings, structures, driveways, parking lots, landscape areas, and boundaries.
 - 3. Statement of Owner's Consent. Written consent of the owner or landlord of the proposed site to operate a cannabis distribution business, specifying the street address and parcel number.
 - 4. Security.

- i. **Security Surveillance Cameras.** Security surveillance cameras and a video recording system shall be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system shall be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the distribution site. The recording system shall be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.
 - ii. **Security Video Retention.** Video from the security surveillance cameras shall be recording at all times (twenty-four (24) hours a day, seven (7) days a week) and the recording shall be maintained for at least ninety (90) days. The video recordings shall be made available to the city upon request.
 - iii. **Alarm System.** Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition. The alarm system shall include a private security company that is required to respond to every alarm.
5. **Odor Control.** A detailed plan describing the air treatment system, or other methods that will be implemented to prevent cannabis odors from being detected outside the business site.
6. **Distribution Site Restricted.** A cannabis distribution business shall not open their distribution site to the public. A cannabis distribution business shall not allow anyone on the distribution site, except for managers, staff, and other persons with a bona fide business or regulatory purpose for being there, such as contractors, inspectors, and cannabis transporters. A juvenile shall not be on the distribution site or operate a cannabis distribution business in any capacity, including, but not limited to, as a manager, staff, employee, contractor, or volunteer.
7. **Tax Compliance.** A cannabis distribution business shall maintain any applicable tax certificates and permits, and timely remit any taxes due to the appropriate government entity.
8. **Insurance.** A cannabis distribution business shall maintain certificates of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
9. **Waste Management Plan.** A cannabis distribution business shall submit and comply with an approved commercial cannabis waste management plan describing how commercial cannabis waste will be disposed.

Section 5-21-109 Inspections and record retention.

A. Authority to inspect.

1. City officials or law enforcement may reasonably enter and inspect the cannabis business at any time between the hours of 6:00 a.m. and 11:00 p.m. on any day of the week, or at any reasonable time, to ensure compliance and enforcement of this chapter.

2. City officials may inspect and demand copies of records maintained by the cannabis business, except for private medical records, that shall be made available to law enforcement agencies only pursuant to a properly executed search warrant, subpoena, or court order.
 3. A person shall not refuse, impede, obstruct, or interfere with an inspection pursuant to this chapter.
- B. Records. A cannabis business shall maintain accurate records of commercial cannabis activity for a minimum of seven (7) years in accordance with Chapter 16 (commencing with section 2610) of Division 10 of the Business and Professions Code.

Section 5-21-110 Appeals.

- A. An applicant or cannabis business may appeal any adverse action taken under this chapter to the City Council.
- B. All appeals taken under this chapter must be taken within thirty (30) days after the adverse action by filing with the office of the City Clerk a written notice of appeal specifying the grounds thereof. An appeal shall be accompanied by a non-refundable filing fee, as established by resolution adopted by the City Council from time to time.
- C. The City Clerk, upon the filing of such appeal and payment of an appeal fee, shall place the matter upon the agenda for the next regular meeting of the City Council occurring not earlier than five (5) days after the filing of the appeal, and shall notify the appealing permit applicant by letter of the meeting date and place at which the appeal will be heard.

Section 5-21-111 Penalties.

- A. Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be abated by the City as provided in the Turlock Municipal Code or under any applicable provision of state law.
- B. In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.
- C. Violations of this chapter shall be subject to an administrative penalty. The amount of the administrative penalty shall be five hundred dollars (\$500) for the first offense within a 12-month period, one thousand dollars (\$1,000) for the second offense within a 12-month period, and two thousand dollars (\$2,000) for any subsequent offense within a 12-month period.

D. Penalty Enhancements.

1. In addition to any other enforcement permitted by this chapter, the City may double any administrative penalty for egregious violations of this chapter. Egregious violations include (a) the unpermitted use of volatile solvents, (b) the operation of a cannabis business without City approval, or (c) a cannabis business allowing minors to consume or possess cannabis or cannabis products.
2. If a cannabis business receives four (4) or more penalties for violating this chapter within any 12-month period, that business shall be immediately prohibited from operating within the City.

Section 5-21-112 Cost Recovery.

- A. The City shall be entitled to recover its abatement and enforcement costs incurred in obtaining compliance with this chapter. Costs incurred by the City are recoverable even if a public nuisance, a violation of the Turlock Municipal Code, or other applicable law is corrected by the property owner or other responsible party.
- B. The cost of abating a public nuisance or enforcing this chapter shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property or the responsible party. If there is more than one responsible party, each party shall be jointly and severally liable for the costs.
- C. For purposes of this chapter, the following additional definitions shall apply:
 1. "Abatement costs" include the actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including but not limited to, investigation costs, costs to enforce the Turlock Municipal Code and any applicable state or county law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include personnel costs, administrative overhead, costs for equipment such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by City.
 2. "Enforcement costs" include all actual and reasonable costs incurred by the City to enforce compliance with the Turlock Municipal Code and any applicable state, county, or City public health and safety law that are not included within abatement costs. Enforcement costs shall also include, but are not limited to, costs of fringe benefits for personnel, administrative overhead, costs of equipment, costs of materials, costs related to investigations, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Turlock Municipal Code or state or county law violations, and reasonable attorneys' fees related to these activities.

3. "Responsible party" means a person or entity responsible for creating, causing, committing, or maintaining the violation of this chapter or state or county law.
4. "Subject property" means the real property that is the subject of any abatement or enforcement action by the City for which the City incurred costs and seeks recovery under this chapter.

SECTION 2. AMENDMENT: Title 5, Chapter 5-14, Section 5-14-01 is hereby amended to read as follows:

Section 5-14-01 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) Drug paraphernalia. "Drug paraphernalia" shall mean all equipment, products, and materials of any kind which are used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the State. "Drug paraphernalia" shall include, but not be limited to, all of the following:

- (1) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (2) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (3) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances;
- (4) Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in cutting controlled substances;
- (5) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis;
- (6) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (7) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

- (8) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; and
- (9) Objects used, intended for use, or designed for use in injecting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as:
 - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) Water pipes;
 - (iii) Carburetion tubes and devices;
 - (iv) Smoking and carburetion masks;
 - (v) Roach clips, meaning objects to hold burning materials, such as a cannabis cigarette that has become too small or too short to be held in the hand;
 - (vi) Miniature cocaine spoons and cocaine vials;
 - (vii) Chamber pipes;
 - (viii) Carburetor pipes;
 - (ix) Air-driven pipes; and
 - (x) Bongs.

In determining whether an object is "drug paraphernalia," a court or other authority may consider to the extent authorized by law, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows intend to use the object to facilitate a violation of the laws of the State relating to controlled substances;
- (7) Descriptive materials or instructions, oral or written, accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;

(9) The manner in which the object is displayed for sale, including its proximity to other objects falling within the definition of drug paraphernalia;

(10) Direct or circumstantial evidence of the ratio of the sales of the object to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses for the object in the community;
and

(12) Expert testimony concerning its use.

(b) Business. "Business" shall mean a fixed location, whether indoors or outdoors, at which merchandise is offered for sale.

(c) Display. "Display" shall mean to show or have available for viewing.

(d) Sell. "Sell" shall mean any form of transfer of possession or delivery, whether with or without consideration.

(e) Advertise. "Advertise" shall mean to verbally, literally, or pictorially display, publicize, or tell of an item or a quantum of merchandise that is offered for sale.

(f) Minor. "Minor" shall mean any person under eighteen (18) years of age.

(g) Controlled substance. "Controlled substance" shall mean those controlled substances set forth in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code of the State, identified as Schedules I through V, inclusive, as said sections now exist or may hereafter be amended, renumbered, or added to in any way.

(h) Enclosure. "Enclosure" shall mean floor space, the physical access to which is restricted and the interior of which is not subject to view by a patrol from the outside.

(i) Person. "Person" shall mean a natural person or any firm, partnership, association, corporation, or cooperative association.

SECTION 3. AMENDMENT: Title 3, Chapter 3-1, Section 3-1-101 is hereby amended to read as follows:

3-1-101 Statement and purpose of chapter: Prohibitions.

(a) There is imposed upon the businesses, trades, professions, callings and occupations in the City a license tax in the amounts hereinafter prescribed.

(b) It shall be unlawful for any person whether as a principal or as an agent or employee for any other person or for any corporate body, or otherwise, to commence and carry on any business, trade, profession, calling or occupation in the City without first having

procured a license from the City to do so and without having complied with any and all applicable provisions of this chapter.

(c) This chapter shall not be construed to require any person to obtain a license prior to doing business within the City if such requirement conflicts with the Constitution of the United States or of the State, or any applicable statutes.

(d) The City shall not approve licenses or uses that violate applicable State or Federal law.

(e) In the event that any portions of this chapter are deemed to be for any reason unenforceable, the remaining provisions of this chapter shall remain in full force and effect.

SECTION 4. VALIDITY: If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Turlock City Council hereby declares that they would have passed this ordinance, and each section, subsection, sentence, clause, word, or phrase thereof, irrespective of the fact that one or more section, subsection, sentence, clause, word, or phrase be declared invalid or unconstitutional.

SECTION 5. ENACTMENT: Prior to the expiration of fifteen (15) days from the passage and adoption thereof, this ordinance shall be published in a newspaper of general circulation printed and published in the County of Stanislaus, State of California, together with names of the members of the City Council voting for and against the same.


PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 11th day of June, 2019, by the following vote:

AYES: Councilmembers Arellano, Nosrati, Larson, and Esquer
NOES: Mayor Bublak
NOT PARTICIPATING: None
ABSENT: None

Signed and approved this 11th day of June, 2019.



AMY BUBLAK, Mayor

ATTEST:


Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California

The foregoing is a correct copy of the original resolution on file in the Office of the City Clerk which has not been revoked and is now in full force and effect.




Jennifer Land, City Clerk, City of Turlock,
County of Stanislaus, State of California

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EXHIBIT 35

ORDINANCE NO. 1944
(First Reading)

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE REPEALING CHAPTER 9.13 MEDICAL CANNABIS REGULATIONS AND REPEALING ORDINANCE NO. 1917 URGENCY ORDINANCE EXTENDING URGENCY INTERIM ORDINANCE IMPOSING MORATORIUM ON CANNABIS LAND USES, DELIVERIES, AND OUTDOOR CANNABIS CULTIVATION, AND REPLACING WITH CHAPTER 9.13 CANNABIS REGULATIONS, OF THE VACAVILLE MUNICIPAL CODE

WHEREAS, the City of Vacaville, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, federal law (codified as 21 U.S.C. Section 801 et seq., and titled the "Controlled Substances Act") generally prohibits the cultivation, possession, and use of cannabis; and

WHEREAS, on October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 268, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act ("MCRSA"). The MCRSA established a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

WHEREAS, on January 26, 2016, the Vacaville City Council adopted Ordinance No. 1892, which completely prohibited commercial medical cannabis activities in the City.

WHEREAS, on November 8, 2016 voters passed Proposition 64, the Adult Use of Marijuana Act ("AUMA"). This proposition and subsequent State legislation were intended to permit adults 21 years and older to use, possess, purchase and grow nonmedical cannabis within defined limits, and to allow local governments to reasonably regulate the personal cultivation of nonmedical cannabis for personal use, by adults 21 years and older through zoning and other local laws, and to grant local jurisdictions control over all commercial cannabis activity, including but not limited to, outdoor cultivation. The purpose and intent also was to allow local governments to ban nonmedical marijuana businesses; and

WHEREAS, on June 27, 2017, Governor Brown approved Senate Bill 94 (titled "Medicinal and Adult-Use Cannabis Regulation and Safety Act" (MAUCRSA)), which repealed the MCRSA and consolidated the regulatory scheme for medical and non-medical cannabis. The MAUCRSA retains provisions of earlier enacted State laws (MCRSA and AUMA) that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial activity if approval of the State license will violate the provisions of any local ordinance or regulation; and

WHEREAS, the Vacaville City Council adopted Ordinance No. 1916 on September 26, 2017 which placed a moratorium on the approval, commencement, establishment, or operation

of all industrial, retail, and commercial cannabis land uses, deliveries, and all outdoor cannabis cultivation in any zoning district within the City of Vacaville; and

WHEREAS, the Vacaville City Council approved an extension to the moratorium through the adoption of Ordinance No. 1917 on October 24, 2017, which shall terminate on September 26, 2019; and

WHEREAS, the Vacaville City Council received information on commercial, industrial, and agricultural cannabis activities in a staff presentation on April 9, 2019; and

WHEREAS, the Vacaville City Staff held an open house meeting on April 17, 2019 to receive the City residents' and general public's input; and

WHEREAS, the Vacaville City Council received information on the City residents' and general public's input in a staff presentation on April 23, 2019; and

WHEREAS, the Vacaville City Staff meet with the Vacaville Chamber of Commerce Business Roundtable on May 10, 2019, to gather the input of the City businesses; and

WHEREAS, on April 9, 2019, the Vacaville City Council determined that unregulated commercial, industrial, and outdoor agricultural cannabis activity can be detrimental to the public health, safety, and welfare for a number of reasons, including but not limited to:

1. Nature of cash business warrants concerns about operations and patron's safety from personal crimes of theft, robbery, and assault;
2. Inadequate data and information from industry and real operations at large insufficient to ensure the public health, safety, and welfare;
3. Improper safety equipment and regulations can create fire and environmental hazards; and

WHEREAS, April 9, 2019, the Vacaville City Council directed Staff to return with a proposed ordinance to ban commercial, industrial, and agricultural cannabis activities.

WHEREAS, the Vacaville City Council held a duly notice public hearing on the proposed ordinance, at which time all person interested in the propose ordinance had the opportunity and did address the City Council on these matters.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1. Repeal Vacaville Ordinance Number 1917.

Vacaville Ordinance No. 1917, titled Urgency Ordinance of the City Council of the City of Vacaville Extending the Urgency Interim Ordinance (Ordinance No. 1916) Imposing a Moratorium on the Approval, Commencement, Establishment or Operation of All Commercial, Industrial, and Retail Cannabis Land Uses, Deliveries, and All Outdoor Cannabis Cultivation, is hereby repealed on the effective date of this ordinance.

Section 2. Repeal Chapter 9.13. of the Vacaville Municipal Code.

Chapter 9.13, Medical Cannabis Regulations, of the Vacaville Municipal Code, last amended December 11, 2018 under Ordinance No. 1934, is hereby repealed on the effective date of this ordinance.

Section 3. Replace Chapter 9.13. of the Vacaville Municipal Code.

Chapter 9.13, Medical Cannabis Regulations, of the Vacaville Municipal Code last amended December 11, 2018 under Ordinance No. 1934; is hereby replaced with the following:

Chapter 9.13 CANNABIS REGULATIONS

- 9.13.010 Purpose.**
- 9.13.020 Definitions.**
- 9.13.030 Prohibited uses and activities.**
- 9.13.040 Exceptions.**
- 9.13.050 Violation, penalty.**

9.13.010 Purpose.

The purpose of this chapter is to expressly prohibit the establishment of both medicinal and recreational commercial, industrial, and agricultural cannabis uses and activities in the City.

The City Council finds that prohibition of commercial, industrial, and agricultural cannabis uses and activities is necessary for the preservation and protection of the public health, safety, and welfare of the city. The prohibition of such uses is within the authority conferred upon the City Council by State law and is an exercise of its police powers to enact and enforce regulations for the public health, safety, and welfare of the city.

As State law is amended from time to time, where this ordinance conflicts with State law, State law prevails until and unless such State law is repealed or such conflict ceases to exist. The remaining portions that are not in conflict remain in full force.

9.13.020 Definitions.

"Agricultural" shall have the same meaning as "cultivation." Agricultural shall not include the personal cultivation of cannabis as permitted under California Health and Safety Code Section 11362.2, as amended from time to time, and Chapter 9.14 of this code.

"Cannabis" shall have the same meaning as set forth in California Business and Professions

Code Section 26001(f), as amended from time to time, and which states that "cannabis" 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code. "Cannabis" also includes marijuana or marihuana.

"Cannabis accessories" shall have the same meaning as set forth in California Health and Safety Code Section 11018.2, as amended from time to time, and which states that "cannabis accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

"Cannabis concentrate" shall have the same meaning as set forth in California Business and Professions Code Section 26001(h), as amended from time to time, and which states that "cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this chapter.

"Cannabis events" means any planned public or social occasion which is advertised, designed to have the effect of or having the effect of gathering people, in or on any public property for any purpose where the use, purchase, exchange, display, or advertisement of cannabis, cannabis accessories, cannabis concentrate, or cannabis products occur.

"Cannabis products" shall have the same meaning as set forth in California Health and Safety Code Section 11018.1, as amended from time to time, and which states that "cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

"City" shall mean the City of Vacaville.

"Commercial cannabis activity" shall have the same meaning as set forth in California Business and Professions Code Section 26001(k), as amended from time to time, and which states that "commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products.

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 26001(l), as amended from time to time, and which states that "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" shall have the same meaning as set forth in California Business and Professions Code Section 26001(p), as amended from time to time, and which states that "delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any advertising platform or technology platform.

"Distributor" means a person that is responsible for transporting cannabis goods, arranging for testing of cannabis goods, and conducting quality assurance review of cannabis goods to ensure they comply with all the packaging and labeling requirements.

"Industrial hemp" shall have the same meaning as set forth in California Health and Safety Code Section 11018.5(a), as amended from time to time, and which states that "industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

"Manufacture" shall have the same meaning as set forth in California Business and Professions Code Section 26000(ag), as amended from time to time, and which states that "manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. The terms "manufacture" and "process" shall be interchangeable as used in this chapter and Chapter 9.14 of this code.

"Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container. Manufacturers may be licensed to use nonvolatile solvents or volatile solvents.

"Marijuana" or **"marihuana"** shall have the same meaning as cannabis.

"Medicinal and Adult-Use Cannabis Regulation and Safety Act" or **"MAUCRSA"** shall mean the following bill signed into law on June 27, 2017: SB 94.

"Medicinal cannabis," or **"medicinal cannabis product,"** shall have the same meanings as set forth in California Business and Professions Code Section 26001(ai), as amended from time to time, and which states that "medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1998 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Microbusiness" means a person holding a license issued under paragraph (3) of subdivision (a) of Section 26070 of the California Business and Professions Code, which allows a person to engage in the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer (Type 6), and retailer, as specified in an application. In order to hold a microbusiness license, a licensee must engage in at least three (3) of the four (4) listed commercial cannabis activities.

"Non-Storefront Retailer" means a person that sells cannabis, cannabis accessories, cannabis

concentrate, or cannabis products, to customers exclusively through delivery.

"Non-volatile solvent" means a solvent that does not nor produces a flammable gas or vapor that, when present in the air in sufficient quantities, will not create explosive or ignitable mixtures.

"Nursery" shall have the same meaning as set forth in California Business and Professions Code Section 26001(aj), as amended from time to time, and which states that a "nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

"Person" shall have the same meaning as set forth in California Business and Professions Code Section 26001(an), as amended from time to time, and which states that a "person" includes an individual, firm, partnership, joint venture, cooperative, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

"Premises," also known as "dispensary," shall have the same meaning as set forth in California Business and Professions Code Section 26001(ap), as amended from time to time, and which states that "premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee. The terms "premises" and "dispensary" shall be interchangeable as used in this chapter and Chapter 9.14 of this code. For the purposes of this chapter, "premises" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for individuals with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Primary caregiver" shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(d), as amended from time to time, and which states that "primary caregiver" means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

- (1) In a case in which a qualified patient or individual with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for individuals with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or individual with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or individual with an identification card, if every qualified patient or individual with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or individual with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or individual with an identification card.

"Qualified patient" shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(f), as amended from time to time, and which states that "qualified patient" means an individual who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to California Health and Safety Code Section 11362.7 et seq.

"Sell", "sale", and "to sell" is defined under Section 26001(as) of the California Business and Professions Code to include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

"Storefront Retailer" means a person that sells cannabis, cannabis accessories, cannabis concentrate, or cannabis products to customers at its premises or by delivery.

"Testing Laboratory" shall have the same meaning as set forth in California Business and Professions Code Section 26001(at), as amended from time to time, and which states that a "testing laboratory" means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and

(2) licensed by the Bureau of Cannabis Control within the Department of Consumer Affairs.

"Transport Only Distributor" means a person that transports cannabis, cannabis accessories, cannabis concentrate, or cannabis products between licensed cultivators, manufacturers, and distributors; not to a licensed retail or any other distributor activities.

"Volatile solvent" shall have the same meaning as set forth in California Health and Safety Code Section 11362.3(b)(3), as amended from time to time, and which states that "volatile solvent" means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

9.13.030 Prohibited uses and activities.

A. Commercial, industrial, or agricultural cannabis activity, whether or not for profit, is prohibited anywhere within the City. No person shall establish, operation, maintain, conduct, or allow to engage in commercial, industrial, or agricultural activity anywhere within the City. To the extent

this prohibition conflicts with any other provision of this Municipal Code, this prohibition will control. Such commercial, industrial, or agricultural activities include, but are not limited to:

1. Cultivation, indoor other than as permitted under Chapter 9.14 of this code
2. Cultivation, outdoor
3. Nursery
4. Testing Laboratory
5. Manufacture, non-volatile solvent or volatile solvent
6. Non-storefront retailer and Storefront retailer
7. Distributor and Transport Only Distributor
8. Microbusiness
9. Cannabis Events

B. A property owner or property manager shall not rent, lease, or otherwise permit any person that engages in commercial, industrial, or agricultural cannabis activity to occupy real property in the City. A property owner or property manager shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial, industrial, or agricultural cannabis activity on any real property owned by that property owner or controlled by that property owner or property manager that is located in the City.

C. Subsection A, above, shall prohibit all activities for which a State license is required pursuant to MAUCRSA, as the same may be amended from time to time. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under MAUCRSA, as the same may be amended from time to time. The City shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5, as amended from time to time.

D. To the extent not already prohibited by subsection A above, all sales or deliveries of cannabis, cannabis concentrate, or cannabis products to or from any location in the City, are expressly prohibited except as further specified in Section 9.13.040. No person shall conduct or perform any sale or delivery of any cannabis, cannabis concentrate, or cannabis products for medicinal or recreational purposes, which sale or delivery originate from within or outside the City and terminates within the City. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the City for sale, delivery or distribution to a person located outside the City, where such transport does not involve delivery, sale, or distribution within the jurisdictional limits of the City.

9.13.040 Exceptions.

A. Notwithstanding Subsection 9.13.030 above, the delivery of medicinal and recreational cannabis, cannabis concentrate, or cannabis product from a business located outside the City and licensed under the MAUCRSA or any other provision of law that permits State licenses of cannabis activities by right, shall be permitted into the City until such State law is repealed or no longer restricts local jurisdictional control over the delivery of medicinal or recreational cannabis, cannabis concentrate, or cannabis product.

B. If any provision of this Chapter conflicts with State law, such State law shall supersede the conflicting provision of this Chapter until such State law is either repealed or no conflict exists.

C. This Chapter does not regulate personal home cannabis cultivation, covered under Chapter 9.14 of this code.

9.13.050 Violation, penalty.

In addition to any other enforcement permitted by Chapters 1.28, 8.10, and 14.09.139 of the City of Vacaville Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violated this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapters 1.28 or 8.10 of the City of Vacaville Municipal Code, no provision of aforementioned sections or this section authorizes a criminal prosecution, arrest, or penalty inconsistent with or prohibited by State law, as amended from time to time. In the event of conflict between the penalties enumerated under Chapters 1.28 and 8.10 and any penalties set forth in State law, the maximum penalties allowable under State law prevail.

Section 4. Environmental Analysis.

Pursuant to the California Environmental Quality Act (CEQA), the City has determined that the proposed amendments are exempt from CEQA based on section 15061(b)(3), under which a project is exempt from CEQA when it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Under the proposed text, prohibition of commercial, industrial, and agricultural cannabis activities will not have significant impacts on the environment because implementation of the ordinance will not result in a permeant alteration of property nor the construction of any new or expanded structures. Therefore, there would be no change to the land use. Consistent with CEQA and Vacaville Municipal Code Section 14.03.021, a notice of exemption shall be filed should the project be approved.

Section 5. Severability.

If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 6. Restatement of Existing Law.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

Section 7. Effective Date.

This ordinance shall take effect thirty days after passage thereof.

Section 8. Publication.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was **introduced** at a regular meeting of the City Council of the City of Vacaville, held on the 11th day of June, 2019.

AYES: Council members Beaty, Mashburn and Mayor Rowlett

NOES: Council member Sullivan

ABSENT: Vice Mayor Harris

ATTEST:



Michelle Thornbrugh, City Clerk

Dated: June 12, 2019

**ORDINANCE NO. 1944
(Second Reading)**

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE REPEALING CHAPTER 9.13 MEDICAL CANNABIS REGULATIONS AND REPEALING ORDINANCE NO. 1917 URGENCY ORDINANCE EXTENDING URGENCY INTERIM ORDINANCE IMPOSING MORATORIUM ON CANNABIS LAND USES, DELIVERIES, AND OUTDOOR CANNABIS CULTIVATION, AND REPLACING WITH CHAPTER 9.13 CANNABIS REGULATIONS, OF THE VACAVILLE MUNICIPAL CODE

WHEREAS, the City of Vacaville, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, federal law (codified as 21 U.S.C. Section 801 et seq., and titled the "Controlled Substances Act") generally prohibits the cultivation, possession, and use of cannabis; and

WHEREAS, on October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which were collectively known as the Medical Cannabis Regulation and Safety Act ("MCRSA"). The MCRSA established a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses have a local license or permit to operate in addition to a State license. The MCRSA allowed the City to completely prohibit commercial medical cannabis activities.

WHEREAS, on January 26, 2016, the Vacaville City Council adopted Ordinance No. 1892, which completely prohibited commercial medical cannabis activities in the City.

WHEREAS, on November 8, 2016 voters passed Proposition 64, the Adult Use of Marijuana Act ("AUMA"). This proposition and subsequent State legislation were intended to permit adults 21 years and older to use, possess, purchase and grow nonmedical cannabis within defined limits, and to allow local governments to reasonably regulate the personal cultivation of nonmedical cannabis for personal use by adults 21 years and older through zoning and other local laws, and to grant local jurisdictions control over all commercial cannabis activity, including but not limited to, outdoor cultivation. The purpose and intent also was to allow local governments to ban nonmedical marijuana businesses; and

WHEREAS, on June 27, 2017, Governor Brown approved Senate Bill 94 (titled "Medicinal and Adult-Use Cannabis Regulation and Safety Act" (MAUCRSA)), which repealed the MCRSA and consolidated the regulatory scheme for medical and non-medical cannabis. The MAUCRSA retains provisions of earlier enacted State laws (MCRSA and AUMA) that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial activity if approval of the State license will violate the provisions of any local ordinance or regulation; and

WHEREAS, the Vacaville City Council adopted Ordinance No. 1916 on September 26, 2017 which placed a moratorium on the approval, commencement, establishment, or operation

of all industrial, retail, and commercial cannabis land uses, deliveries, and all outdoor cannabis cultivation in any zoning district within the City of Vacaville; and

WHEREAS, the Vacaville City Council approved an extension to the moratorium through the adoption of Ordinance No. 1917 on October 24, 2017, which shall terminate on September 26, 2019; and

WHEREAS, the Vacaville City Council received information on commercial, industrial, and agricultural cannabis activities in a staff presentation on April 9, 2019; and

WHEREAS, the Vacaville City Staff held an open house meeting on April 17, 2019 to receive the City residents' and general public's input; and

WHEREAS, the Vacaville City Council received information on the City residents' and general public's input in a staff presentation on April 23, 2019; and

WHEREAS, the Vacaville City Staff meet with the Vacaville Chamber of Commerce Business Roundtable on May 10, 2019, to gather the input of the City businesses; and

WHEREAS, on April 9, 2019, the Vacaville City Council determined that unregulated commercial, industrial, and outdoor agricultural cannabis activity can be detrimental to the public health, safety, and welfare for a number of reasons, including but not limited to:

1. Nature of cash business warrants concerns about operations and patron's safety from personal crimes of theft, robbery, and assault;
2. Inadequate data and information from industry and real operations at large insufficient to ensure the public health, safety, and welfare;
3. Improper safety equipment and regulations can create fire and environmental hazards; and

WHEREAS, April 9, 2019, the Vacaville City Council directed Staff to return with a proposed ordinance to ban commercial, industrial, and agricultural cannabis activities.

WHEREAS, the Vacaville City Council held a duly notice public hearing on the proposed ordinance, at which time all person interested in the propose ordinance had the opportunity and did address the City Council on these matters.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1. Repeal Vacaville Ordinance Number 1917.

Vacaville Ordinance No. 1917, titled Urgency Ordinance of the City Council of the City of Vacaville Extending the Urgency Interim Ordinance (Ordinance No. 1916) Imposing a Moratorium on the Approval, Commencement, Establishment or Operation of All Commercial,

Industrial, and Retail Cannabis Land Uses, Deliveries, and All Outdoor Cannabis Cultivation, is hereby repealed on the effective date of this ordinance.

Section 2. Repeal Chapter 9.13. of the Vacaville Municipal Code.

Chapter 9.13, Medical Cannabis Regulations, of the Vacaville Municipal Code, last amended December 11, 2018 under Ordinance No. 1934, is hereby repealed on the effective date of this ordinance.

Section 3. Replace Chapter 9.13. of the Vacaville Municipal Code.

Chapter 9.13, Medical Cannabis Regulations, of the Vacaville Municipal Code last amended December 11, 2018 under Ordinance No. 1934; is hereby replaced with the following:

**Chapter 9.13
CANNABIS REGULATIONS**

- 9.13.010 Purpose.**
- 9.13.020 Definitions.**
- 9.13.030 Prohibited uses and activities.**
- 9.13.040 Exceptions.**
- 9.13.050 Violation, penalty.**

9.13.010 Purpose.

The purpose of this chapter is to expressly prohibit the establishment of both medicinal and recreational commercial, industrial, and agricultural cannabis uses and activities in the City.

The City Council finds that prohibition of commercial, industrial, and agricultural cannabis uses and activities is necessary for the preservation and protection of the public health, safety, and welfare of the city. The prohibition of such uses is within the authority conferred upon the City Council by State law and is an exercise of its police powers to enact and enforce regulations for the public health, safety, and welfare of the city.

As State law is amended from time to time, where this ordinance conflicts with State law, State law prevails until and unless such State law is repealed or such conflict ceases to exist. The remaining portions that are not in conflict remain in full force.

9.13.020 Definitions.

"Agricultural" shall have the same meaning as "cultivation." Agricultural shall not include the personal cultivation of cannabis as permitted under California Health and Safety Code Section 11362.2, as amended from time to time, and Chapter 9.14 of this code.

"Cannabis" shall have the same meaning as set forth in California Business and Professions Code Section 26001(f), as amended from time to time, and which states that "cannabis" 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound,

manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code. "Cannabis" also includes marijuana or marihuana.

"Cannabis accessories" shall have the same meaning as set forth in California Health and Safety Code Section 11018.2, as amended from time to time, and which states that "cannabis accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

"Cannabis concentrate" shall have the same meaning as set forth in California Business and Professions Code Section 26001(h), as amended from time to time, and which states that "cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this chapter.

"Cannabis events" means any planned public or social occasion which is advertised, designed to have the effect of or having the effect of gathering people, in or on any public property for any purpose where the use, purchase, exchange, display, or advertisement of cannabis, cannabis accessories, cannabis concentrate, or cannabis products occur.

"Cannabis products" shall have the same meaning as set forth in California Health and Safety Code Section 11018.1, as amended from time to time, and which states that "cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

"City" shall mean the City of Vacaville.

"Commercial cannabis activity" shall have the same meaning as set forth in California Business and Professions Code Section 26001(k), as amended from time to time, and which states that "commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products.

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 26001(l), as amended from time to time, and which states that "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" shall have the same meaning as set forth in California Business and Professions Code Section 26001(p), as amended from time to time, and which states that "delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any advertising platform or technology platform.

"Distributor" means a person that is responsible for transporting cannabis goods, arranging for testing of cannabis goods, and conducting quality assurance review of cannabis goods to ensure they comply with all the packaging and labeling requirements.

"Industrial hemp" shall have the same meaning as set forth in California Health and Safety Code Section 11018.5(a), as amended from time to time, and which states that "industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

"Manufacture" shall have the same meaning as set forth in California Business and Professions Code Section 26000(ag), as amended from time to time, and which states that "manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. The terms "manufacture" and "process" shall be interchangeable as used in this chapter and Chapter 9.14 of this code.

"Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container. Manufacturers may be licensed to use nonvolatile solvents or volatile solvents.

"Marijuana" or **"marihuana"** shall have the same meaning as cannabis.

"Medicinal and Adult-Use Cannabis Regulation and Safety Act" or **"MAUCRSA"** shall mean the following bill signed into law on June 27, 2017: SB 94.

"Medicinal cannabis," or **"medicinal cannabis product,"** shall have the same meanings as set forth in California Business and Professions Code Section 26001(ai), as amended from time to time, and which states that "medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Microbusiness" means a person holding a license issued under paragraph (3) of subdivision (a) of Section 26070 of the California Business and Professions Code, which allows a person to engage in the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer (Type 6), and retailer, as specified in an application. In order to hold a microbusiness license, a licensee must engage in at least three (3) of the four (4) listed commercial cannabis activities.

"Non-Storefront Retailer" means a person that sells cannabis, cannabis accessories, cannabis concentrate, or cannabis products, to customers exclusively through delivery.

"Non-volatile solvent" means a solvent that does not nor produces a flammable gas or vapor that, when present in the air in sufficient quantities, will not create explosive or ignitable mixtures.

"Nursery" shall have the same meaning as set forth in California Business and Professions Code Section 26001(aj), as amended from time to time, and which states that a "nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

"Person" shall have the same meaning as set forth in California Business and Professions Code Section 26001(an), as amended from time to time, and which states that a "person" includes an individual, firm, partnership, joint venture, cooperative, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

"Premises," also known as "dispensary," shall have the same meaning as set forth in California Business and Professions Code Section 26001(ap), as amended from time to time, and which states that "premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee. The terms "premises" and "dispensary" shall be interchangeable as used in this chapter and Chapter 9.14 of this code. For the purposes of this chapter, "premises" shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for individuals with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Primary caregiver" shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(d), as amended from time to time, and which states that "primary caregiver" means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

(1) In a case in which a qualified patient or individual with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for individuals with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or individual with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or individual with an identification card, if every qualified patient or individual with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or individual with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or individual with an identification card.

"Qualified patient" shall have the same meaning as set forth in California Health and Safety Code Section 11362.7(f), as amended from time to time, and which states that "qualified patient" means an individual who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to California Health and Safety Code Section 11362.7 et seq.

"Sell", "sale", and "to sell" is defined under Section 26001(as) of the California Business and Professions Code to include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased.

"Storefront Retailer" means a person that sells cannabis, cannabis accessories, cannabis concentrate, or cannabis products to customers at its premises or by delivery.

"Testing Laboratory" shall have the same meaning as set forth in California Business and Professions Code Section 26001(at), as amended from time to time, and which states that a "testing laboratory" means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and
- (2) licensed by the Bureau of Cannabis Control within the Department of Consumer Affairs.

"Transport Only Distributor" means a person that transports cannabis, cannabis accessories, cannabis concentrate, or cannabis products between licensed cultivators, manufacturers, and distributors; not to a licensed retail or any other distributor activities.

"Volatile solvent" shall have the same meaning as set forth in California Health and Safety Code Section 11362.3(b)(3), as amended from time to time, and which states that "volatile solvent" means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

9.13.030 Prohibited uses and activities.

A. Commercial, industrial, or agricultural cannabis activity, whether or not for profit, is prohibited anywhere within the City. No person shall establish, operation, maintain, conduct, or allow to engage in commercial, industrial, or agricultural activity anywhere within the City. To the extent this prohibition conflicts with any other provision of this Municipal Code, this prohibition will control. Such commercial, industrial, or agricultural activities include, but are not limited to:

1. Cultivation, indoor other than as permitted under Chapter 9.14 of this code

2. Cultivation, outdoor
3. Nursery
4. Testing Laboratory
5. Manufacture, non-volatile solvent or volatile solvent
6. Non-storefront retailer and Storefront retailer
7. Distributor and Transport Only Distributor
8. Microbusiness
9. Cannabis Events

B. A property owner or property manager shall not rent, lease, or otherwise permit any person that engages in commercial, industrial, or agricultural cannabis activity to occupy real property in the City. A property owner or property manager shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial, industrial, or agricultural cannabis activity on any real property owned by that property owner or controlled by that property owner or property manager that is located in the City.

C. Subsection A, above, shall prohibit all activities for which a State license is required pursuant to MAUCRSA, as the same may be amended from time to time. Accordingly, the City shall not issue any permit, license, or other entitlement for any activity for which a State license is required under MAUCRSA, as the same may be amended from time to time. The City shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5, as amended from time to time.

D. To the extent not already prohibited by subsection A above, all sales or deliveries of cannabis, cannabis concentrate, or cannabis products to or from any location in the City, are expressly prohibited except as further specified in Section 9.13.040. No person shall conduct or perform any sale or delivery of any cannabis, cannabis concentrate, or cannabis products for medicinal or recreational purposes, which sale or delivery originate from within or outside the City and terminates within the City. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the City for sale, delivery or distribution to a person located outside the City, where such transport does not involve delivery, sale, or distribution within the jurisdictional limits of the City.

9.13.040 Exceptions.

A. Notwithstanding Subsection 9.13.030 above, the delivery of medicinal and recreational cannabis, cannabis concentrate, or cannabis product from a business located outside the City and licensed under the MAUCRSA or any other provision of law that permits State licenses of cannabis activities by right, shall be permitted into the City until such State law is repealed or no longer restricts local jurisdictional control over the delivery of medicinal or recreational cannabis, cannabis concentrate, or cannabis product.

B. If any provision of this Chapter conflicts with State law, such State law shall supersede the conflicting provision of this Chapter until such State law is either repealed or no conflict exists.

C. This Chapter does not regulate personal home cannabis cultivation, covered under Chapter 9.14 of this code.

9.13.050 Violation, penalty.

In addition to any other enforcement permitted by Chapters 1.28, 8.10, and 14.09.139 of the City of Vacaville Municipal Code, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violated this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable

attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in Chapters 1.28 or 8.10 of the City of Vacaville Municipal Code, no provision of aforementioned sections or this section authorizes a criminal prosecution, arrest, or penalty inconsistent with or prohibited by State law, as amended from time to time. In the event of conflict between the penalties enumerated under Chapters 1.28 and 8.10 and any penalties set forth in State law, the maximum penalties allowable under State law prevail.

Section 4. Environmental Analysis.

Pursuant to the California Environmental Quality Act (CEQA), the City has determined that the proposed amendments are exempt from CEQA based on section 15061(b)(3), under which a project is exempt from CEQA when it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Under the proposed text, prohibition of commercial, industrial, and agricultural cannabis activities will not have significant impacts on the environment because implementation of the ordinance will not result in a permanent alteration of property nor the construction of any new or expanded structures. Therefore, there would be no change to the land use. Consistent with CEQA and Vacaville Municipal Code Section 14.03.021, a notice of exemption shall be filed should the project be approved.

Section 5. Severability.

If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 6. Restatement of Existing Law.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

Section 7. Effective Date.

This ordinance shall take effect thirty days after passage thereof.

Section 8. Publication.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 11th day of June, 2019 and **ADOPTED** and **PASSED** at a regular meeting of the City Council, held on the 25th day of June, 2019 by the following vote:

AYES: Council members Beaty, Mashburn, Sullivan, Vice Mayor Harris and Mayor Rowlett

NOES: Council member Sullivan


ABSENT: None

APPROVED:



Ron Rowlett, Mayor

ATTEST:



Michelle Thornbrugh, City Clerk

Dated: June 27, 2019

State of California)
County of Solano) ss
City of Vacaville)

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.

Michelle A. Thornbrugh
City Clerk of the City of Vacaville, California



I, Michelle A. Thornbrugh, City Clerk of the City of Vacaville, State of California, hereby certify that the foregoing Ordinance No. 1944 was **INTRODUCED** at a regular meeting of the City Council of the City of Vacaville, held on the 11th day of June, 2019, by the following vote:

AYES: Councilmembers Beaty and Mashburn, Mayor Rowlett

NOES: Councilmember Sullivan

ABSENT: Vice Mayor Harris

And **ADOPTED** and **PASSED** at a regular meeting of the City Council of the City of Vacaville held on the 25th day of June, 2019, by the following vote:

AYES: Councilmembers Beaty and Mashburn, Vice Mayor Harris, Mayor Rowlett

NOES: Councilmember Sullivan

ABSENT: None

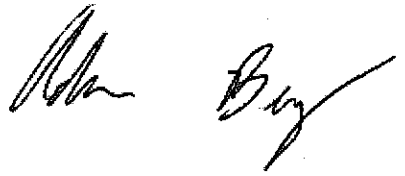
And that this ordinance was published in accordance with the provisions of Government Code Section 36933.

Michelle A. Thornbrugh
Michelle A. Thornbrugh, City Clerk



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EXHIBIT 36



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Attorneys for Plaintiff and Petitioner
EAST OF EDEN CANNABIS CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

UNLIMITED CIVIL JURISDICTION

EAST OF EDEN CANNABIS CO.,

Plaintiff and Petitioner,

v.

SANTA CRUZ COUNTY; SANTA CRUZ
COUNTY ADMINISTRATIVE OFFICE;
SANTA CRUZ COUNTY CANNABIS
LICENSING OFFICE; SAMUEL LOFORTI,
CANNABIS LICENSING MANAGER, IN
HIS OFFICIAL CAPACITY; DOES 1-10,

Defendants and Respondents.

Case No. 19CV02072

**PETITION FOR WRIT OF MANDATE
AND VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF; EXHIBITS 1-3**

Assigned to

INTRODUCTION

1. This Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (Petition/Complaint) challenges the decision of respondents and defendants Santa Cruz County, the Santa Cruz County Administrative Office, the Santa Cruz County Cannabis Licensing Office, and Samuel LoForti in his official capacity as Cannabis Licensing Manager (collectively, respondents/defendants) to enforce certain provisions of the Santa Cruz County Code in violation of state law. Santa Cruz County precludes all cannabis retailers located and licensed outside of

1 Santa Cruz County from making cannabis deliveries to customers located within unincorporated
2 Santa Cruz County by prohibiting deliveries to unincorporated Santa Cruz County *except* by
3 cannabis retailers holding a local (i.e., located in Santa Cruz County) storefront dispensary license.
4 Thus, even if a retailer is located outside Santa Cruz County, and is fully licensed by the State of
5 California and the local jurisdiction where it maintains its licensed premises, it cannot make
6 deliveries into unincorporated Santa Cruz County. Santa Cruz County's delivery restrictions
7 therefore amount to a total ban on deliveries to areas within unincorporated Santa Cruz County by
8 out-of-county retailers.¹ These restrictions are in direct contravention of binding state regulations
9 allowing retailers licensed by the state and acting in compliance with state delivery requirements
10 *to make deliveries to any jurisdiction in the State of California.* (Compare Cal. Code Regs., tit.
11 16, § 5416, subd. (d) with Santa Cruz County Code, ch. 7.130, §§ 7.130.050, subds. (A) & (C),
12 7.130.090, 7.130.110, subds. (A) & (F).) Santa Cruz County's ban on deliveries by out-of-county
13 retailers is therefore preempted by state law, unconstitutional, and void.

14 2. Plaintiff and petitioner East of Eden Cannabis Co. (East of Eden) is a cannabis
15 retailer licensed by the California Bureau of Cannabis Control (BCC) and permitted by the City of
16 Salinas to operate a storefront and retail cannabis delivery business located in Salinas, California.
17 When making deliveries, East of Eden and its employees comply with all relevant state
18 regulations, including the BCC's comprehensive delivery regulations, as well as the relevant local
19 delivery requirements. (See Cal. Code Regs., tit. 16, div. 42.) East of Eden's delivery business
20 includes deliveries to locations within unincorporated areas of Santa Cruz County. East of Eden
21 complied with all of Santa Cruz County's relevant delivery requirements when making deliveries
22 to customers within Santa Cruz County, with the exception of the local storefront dispensary
23 license requirement.

24 3. On May 18, 2019, East of Eden was served with a cease and desist letter from
25 respondents/defendants (the Cease and Desist Letter), ordering East of Eden to immediately stop
26 all activities related to cannabis delivery to consumers within unincorporated Santa Cruz County.

27
28 ¹ East of Eden uses the term "out-of-country retailers" to refer to cannabis businesses that are
located in another jurisdiction and are fully licensed within that jurisdiction and by the state.

1 According to the Cease and Desist Letter, East of Eden was conducting unauthorized deliveries
2 within the county because East of Eden did not have a storefront dispensary license issued by
3 Santa Cruz County, as required by the Santa Cruz County Code. (See Santa Cruz County Code,
4 ch. 7.130, §§ 7.130.050, subds. (A) & (C), 7.130.090, 7.130.110, subds. (A) & (F).) The Cease
5 and Desist Letter threatens East of Eden with a long list of enforcement actions if East of Eden
6 continues to make deliveries to unincorporated Santa Cruz County, including civil, administrative,
7 and criminal action, seeking assistance from federal authorities, and requesting that East of Eden's
8 state retail license be revoked.

9 4. Santa Cruz County's enforcement of its code provisions to bar East of Eden from
10 making deliveries to unincorporated Santa Cruz County is in direct violation of state law
11 permitting East of Eden to make deliveries to any jurisdiction in California. (See Cal. Code Regs.,
12 § 5416, subd. (d).) The licensing requirements in the Santa Cruz County Code make it impossible
13 for East of Eden, and all other licensed out-of-county cannabis businesses, to make deliveries
14 within unincorporated Santa Cruz County. (Santa Cruz County Code, ch. 7.130, § 7.130.050,
15 subd. (C) ["It is unlawful and shall constitute a public nuisance for anyone other than a locally
16 licensed dispensary to engage in retail sales of cannabis, *including mobile delivery of cannabis*
17 *purchased by consumers online or over the telephone*" (emphasis added)].) The Santa Cruz
18 County Code expressly identifies 14 existing local cannabis businesses that are eligible to apply
19 for local Santa Cruz County storefront dispensary licenses, and *no other businesses can obtain*
20 *licenses permitting them to make cannabis deliveries to locations within unincorporated Santa*
21 *Cruz County.* (*Id.*, § 7.130.090.) As a result of these code provisions, *all* licensed out-of-county
22 retailers are prohibited from making deliveries within unincorporated Santa Cruz County, which
23 conflicts with state law permitting cannabis retailers to deliver to any jurisdiction in the state. (See
24 Cal. Code Regs., § 5416, subd. (d).)

25 5. Although Santa Cruz County is empowered to make and enforce local rules, its
26 local rules may not conflict with state laws. (*O'Connell v. City of Stockton* (2007) 41 Cal.4th
27 1061, 1067 (*O'Connell*).) Because Santa Cruz County's code provisions preventing out-of-county
28 retailers from making deliveries to locations within unincorporated Santa Cruz County conflict

with the state's laws permitting licensed retailers to make deliveries to any jurisdiction in the state, these code provisions are preempted, and therefore unconstitutional and void. (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743 (*City of Riverside*); see Cal. Const., art. XI, § 7.) For that reason, the Cease and Desist Letter, which threatens to take extreme action against East of Eden for deliveries made in compliance with state law, is unlawful.

6. Santa Cruz County has no administrative procedure to appeal the Cease and Desist Letter, so East of Eden has no recourse but to seek a writ of mandate from this court compelling respondents/defendants to vacate the Cease and Desist Letter. East of Eden further seeks a declaratory judgment that Santa Cruz County's ban on deliveries by licensed out-of-county retailers is preempted by state law and void, and a permanent injunction preventing Santa Cruz County from enforcing the local storefront license requirement for deliveries by licensed out-of-county retailers.

PARTIES

7. Petitioner and plaintiff East of Eden is a wholly owned subsidiary of BAK Festivals, Inc., a.k.a. Grupo Flor (Grupo Flor). East of Eden is and at all relevant times has been a cannabis retailer licensed by the BCC, License Nos. A10-17-0000063-TEMP and C10-0000224-LIC, and by the City of Salinas in Monterey County. East of Eden's licenses are current and in good standing, and East of Eden is in compliance with all requirements of the licensures. East of Eden operates a retail cannabis storefront and delivery business located in Salinas. East of Eden operates its delivery business consistent with relevant state and local regulations; when delivering to unincorporated Santa Cruz County, East of Eden takes care to comply with the county's requirement for the maintenance of delivery records and the prohibition on advertisements on delivery vehicles. (See Santa Cruz County Code, ch. 7.130, § 7.130.110, subd. (F)(2)-(3).) East of Eden did not believe that it needed a local Santa Cruz County license in addition to its state and Salinas licenses in order to make deliveries into unincorporated Santa Cruz County because section 5416, subdivision (d) of title 16 of the California Code of Regulations expressly permits a cannabis retailer properly licensed by the BCC to deliver to any jurisdiction within the State of

1 California. Until the issuance of the Cease and Desist Letter, East of Eden routinely made
2 cannabis deliveries to physical addresses located in unincorporated Santa Cruz County.

3 8. Respondent/defendant Santa Cruz County is a general law county organized and
4 existing under the laws of the State of California.

5 9. Respondent/defendant Santa Cruz County Administrative Office is a department of
6 respondent/defendant Santa Cruz County and is empowered to oversee cannabis licensing
7 activities.

8 10. Respondent/defendant Santa Cruz County Cannabis Licensing Office is a division
9 of respondent/defendant Santa Cruz County Administrative Office.

10 11. Respondent/defendant Samuel LoForti is the Cannabis Licensing Manager of
11 respondent/defendant Santa Cruz County Cannabis Licensing Office. LoForti signed the Cease
12 and Desist Letter to East of Eden ordering East of Eden to immediately stop all mobile deliveries
13 to consumers within unincorporated Santa Cruz County, and warning that, if East of Eden did not
14 stop all such deliveries, LoForti or others might take steps including recommending East of Eden
15 for criminal prosecution, recommending to the BCC that East of Eden lose its state cannabis
16 license, seeking civil and/or administrative remedies against East of Eden, and seeking assistance
17 from federal authorities.

18 12. East of Eden is ignorant of the true names and capacities of respondents/defendants
19 named here as Does 1 through 10, and therefore sues those respondents/defendants in interest by
20 such fictitious names. East of Eden will amend this Petition/Complaint to allege the true names
21 and capacities of those Doe parties when ascertained.

22 JURISDICTION AND VENUE

23 13. This court has jurisdiction over this action pursuant to Code of Civil Procedure
24 sections 526, 527, 1060, and 1085.

25 14. East of Eden has performed any and all conditions precedent to filing this instant
26 action and has exhausted any and all available administrative remedies to the extent required by
27 law.

28 15. East of Eden has no plain, speedy, or adequate remedy in the ordinary course of

1 law unless this court grants the requested writ of mandate to require respondents/defendants to set
2 aside their Cease and Desist Letter. In the absence of such remedy, respondents/defendants' Cease
3 and Desist Letter will remain in effect in violation of state law.

4 16. Venue is proper in this court because the respondents/defendants are, and/or are
5 located in, the County of Santa Cruz.

6 **BACKGROUND AND GENERAL ALLEGATIONS**

7 **California voters approve the Control, Regulate and Tax Adult-Use of Marijuana Act, which**
8 **allows adults aged 21 and over to engage in nonmedical cannabis use.**

9 17. On November 8, 2016, a majority of California voters approved the Control,
10 Regulate, and Tax Adult-Use of Marijuana Act (Proposition 64), to permit nonmedical use of
11 cannabis by adults aged 21 and over.

12 18. Proposition 64 added to and amended sections of the Penal Code, Business and
13 Professions Code, Health and Safety Code, and Revenue and Taxation Code, establishing a
14 comprehensive scheme for individual nonmedical use and possession of cannabis by adults 21 and
15 over, as well as for commercial growth, distribution, and retail sale of nonmedical cannabis.
16 **The Legislature passes the Medicinal and Adult-Use Cannabis Regulation and Safety Act to**
17 **consolidate and harmonize the State's medical and nonmedical cannabis regimes.**

18 19. In June 2017, the Legislature passed, and the Governor signed, Senate Bill 94,
19 known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (See
20 Bus. & Prof. Code, § 26000, subd. (a).) The purpose of MAUCRSA was to "establish a
21 comprehensive system to control and regulate the cultivation, distribution, transport, storage,
22 manufacturing, processing, and sale of" cannabis under the state's preexisting medical cannabis
23 regime and Proposition 64's nonmedical cannabis regime. (*Id.*, § 26000, subd. (b).)

24 20. MAUCRSA established the BCC, within the Department of Consumer Affairs, to
25 "administer and enforce the provisions of" MAUCRSA. (Bus. & Prof. Code, § 26010.)

26 21. The BCC was granted the sole authority to issue, deny, and otherwise administer
27 state licenses for the commercial retail sale of cannabis. (Bus. & Prof. Code, § 26012, subd.
28 (a)(1).) To that end, the BCC's licensing authorities were granted the authority to "make and

1 prescribe reasonable rules and regulations as may be necessary to implement, administer, and
2 enforce their respective duties” relating to the administration of state licenses for the commercial
3 retail sale of cannabis. (*Id.*, § 26013, subd. (a).)

4 **The Bureau of Cannabis Control adopts regulations to clarify and establish licensing and**
5 **enforcement criteria for the commercial retail sale of cannabis, including a regulation that**
6 **permits a licensed retailer to make deliveries to any jurisdiction in the state.**

7 22. The BCC adopted emergency regulations to implement and clarify licensing and
8 enforcement criteria for commercial cannabis activity under MAUCRSA and the relevant
9 Business and Professions Code sections. (Bus. & Prof. Code, § 26000 et seq.)

10 23. On July 13, 2018, the BCC issued a Notice of Proposed Rulemaking for a
11 comprehensive set of regulations for commercial cannabis activity. (MJN, exh. B, p. 1.)² The
12 BCC’s Initial Statement of Reasons explained that the BCC “was established to create a
13 comprehensive and coherent regulatory framework for an established industry that had not been
14 comprehensively regulated by the state. While the MAUCRSA provides guidance on the larger
15 macro issues, much of the implementation specifics and clarification of terms were left to the
16 [BCC].” (MJN, exh. A, p. 4.)

17 24. On December 3, 2018, following a notice and comment period and several public
18 hearings, the BCC submitted a proposed package of regulations for review by the California
19 Office of Administrative Law. (MJN, exh. B, p. 3.)

20 25. The Office of Administrative Law approved the adoption of the regulations on
21 January 16, 2019, which are now set forth in title 16 of the California Code of Regulations,
22 sections 5000-5905. (MJN, exh. B, pp. 1-2; see Cal. Code Regs., tit. 16, §§ 5000-5905)

23 26. The permanent regulations adopted by the BCC include a comprehensive statewide
24 regulatory scheme for retail sales of cannabis conducted by delivery. (See Cal. Code Regs., tit. 16,
25 §§ 5414-5421.)

26
27
28 ² References to “MJN” are to East of Eden’s Motion for Judicial Notice, which will be filed in
support of East of Eden’s Petition/Complaint when a case number is assigned.

1 27. The delivery regulations adopted by the BCC implement sections 26070 and 26090
2 of the Business and Professions Code. Business and Professions Code section 26070 sets forth
3 certain requirements for the transportation of cannabis and authorizes the BCC to establish
4 licenses and requirements for the delivery of cannabis and cannabis products, and permits retailers
5 to conduct sales exclusively by delivery without a retail storefront. (Bus. & Prof. Code, § 26070,
6 subd. (a)(2).) Business and Professions Code section 26090 authorizes cannabis delivery and
7 states that “a local jurisdiction shall not prevent delivery of cannabis or cannabis products on
8 public roads by a licensee acting in compliance with this division and local law as adopted under
9 [Business and Professions Code section] 26200.” (*Id.*, § 26090, subd. (e).) The BCC delivery
10 regulations include requirements for who may be a delivery driver (Cal. Code Regs., tit. 16,
11 § 5415), safety and monitoring requirements for the delivery vehicle (*id.*, § 5417), and limitations
12 on the dollar value of cannabis inventory that may be carried at one time (*id.*, § 5418).

13 28. As part of the comprehensive delivery scheme, section 5416 of title 16 of the
14 California Code of Regulations regulates the locations to which a retail cannabis delivery may be
15 made. Subdivision (d) of section 5416 of title 16 of the California Code of Regulations (CCR
16 section 5416(d)) permits delivery anywhere in the state: “A delivery employee may deliver to any
17 jurisdiction within the State of California provided that such delivery is conducted in compliance
18 with all delivery provisions of this division.” The remaining subdivisions of section 5416 of title
19 16 of the California Code of Regulations carve out exceptions to the any-jurisdiction rule:
20 deliveries must be made to a physical address; deliveries cannot be made outside the state; the
21 delivery driver may not drive outside the state while in possession of cannabis goods; deliveries
22 cannot be made to any address on publicly owned or leased land or to any building leased by a
23 public agency; and deliveries cannot be made “to a school providing instruction in kindergarten or
24 any grades 1 through 12, day care center, or youth center.” (Cal. Code Regs., tit. 16, § 5416,
25 subds. (a), (b), (c), (e).)

26 29. The BCC’s explanation for CCR section 5416(d) was unambiguous in its
27 affirmance of the general right to deliver to any jurisdiction in California: “Proposed subsection
28 (d) clarifies that a delivery employee may deliver to any jurisdiction within the State of California.

1 This proposed subsection specifies where a delivery employee may deliver within the State of
2 California, which is to any jurisdiction within the State of California. Business and Professions
3 Code section 26090 subdivision (e) prohibits a local jurisdiction from preventing delivery of
4 cannabis goods on public roads by a licensee acting in compliance with law. This is necessary to
5 clarify that MAUCRSA and its implementing regulations do not impose restrictions or limit where
6 a delivery employee may deliver, as long as it is within the State of California.” (MJN, exh. A,
7 p. 110.)

8 **The Santa Cruz County Code provisions regulating cannabis deliveries conflict with Code of**
9 **Civil Regulations, title 16, section 5416, subdivision (d) by prohibiting *all* retailers not**
10 **physically located within unincorporated Santa Cruz County from delivering cannabis**
11 **goods to consumers located within unincorporated Santa Cruz County, and are therefore**
12 **preempted by state law.**

13 30. Santa Cruz County has enacted provisions in its county code “to regulate cannabis
14 dispensaries in the unincorporated area of Santa Cruz County.” (Santa Cruz County Code,
15 ch. 7.130, § 7.130.010.)

16 31. Santa Cruz County’s code provisions prohibit all cannabis retailers located outside
17 Santa Cruz County from making deliveries to locations within unincorporated Santa Cruz County,
18 even if those retailers are in compliance with CCR section 5416. Santa Cruz County’s prohibition
19 on delivery to locations within unincorporated Santa Cruz County results from the interplay of
20 several different provisions of the Santa Cruz County Code.

21 32. First, the Santa Cruz County Code requires all cannabis dispensaries operating
22 *within* unincorporated Santa Cruz County to obtain a local storefront dispensary license, in
23 addition to the state license issued by the BCC. (Santa Cruz County Code, ch. 7.130, § 7.130.050,
24 subd. (A).) Operating a cannabis dispensary without a local license is unlawful and a public
25 nuisance. (*Ibid.*)

26 33. Next, the Santa Cruz County Code extends its local storefront dispensary license
27 requirement to all cannabis retailers *making deliveries* to unincorporated Santa Cruz County,
28 regardless of whether the cannabis retailer already maintains a retail premises elsewhere in the

1 state and holds both a state license and license issued by the jurisdiction in which it is located.
2 The relevant code section states that “it is unlawful and shall constitute a public nuisance for
3 *anyone other than a locally licensed dispensary* to engage in retail sales of cannabis, *including*
4 *mobile delivery of cannabis purchased by consumers online or over the telephone.*” (Santa Cruz
5 County Code, ch. 7.130, § 7.130.050, subd. (C), emphases added; see *id.*, § 7.130.110, subd.
6 (F)(1) [“Holders of a level one dispensary license may deliver cannabis to cannabis consumers off-
7 premises via mobile delivery services subject to the provisions of this section. Only locally
8 licensed dispensaries may engage in mobile delivery of cannabis.”].)

9 34. The Santa Cruz County Code further establishes that only 14 preexisting cannabis
10 businesses are even *eligible* to apply for local storefront dispensary licenses. (Santa Cruz County
11 Code, ch. 7.130, § 7.130.090.) The Code lists the 14 eligible businesses by name. (*Id.*,
12 § 7.130.090, subd. (C)(1)-(14).) There is *no* provision for any other cannabis retail business—
13 located inside or outside Santa Cruz County—to obtain a license that would allow them to make
14 deliveries, or to exempt them from the local-license requirement. (See *id.*, §§ 7.130.090, subds.
15 (A) [creating level one dispensary license] & (C) [listing preexisting entities eligible for level one
16 dispensary licenses], 7.130.110, subds. (A) & (B) [establishing procedures for obtaining and
17 renewing level one dispensary license only].)

18 35. Santa Cruz County has thus prohibited cannabis deliveries to unincorporated Santa
19 Cruz County by all licensed out-of-county cannabis businesses. The Santa Cruz County Code
20 provisions permitting only local storefront dispensary licensees to make deliveries make it
21 impossible for any licensed out-of-county business to deliver cannabis to unincorporated Santa
22 Cruz County.

23 36. Santa Cruz County’s licensing provisions prohibiting all out-of-county cannabis
24 businesses from making deliveries within unincorporated Santa Cruz County expressly conflict
25 with CCR section 5416(d). That conflict is present on the face of the county licensing provisions
26 and CCR section 5416, because Santa Cruz County’s ban on deliveries by out-of-county cannabis
27 businesses expressly contradicts CCR section 5416(d)’s mandate that “a delivery employee may
28 deliver to any jurisdiction within the State of California provided that such delivery is conducted

1 in compliance with all delivery provisions of this division.” Santa Cruz County’s licensing
2 provisions prohibiting deliveries within unincorporated Santa Cruz County are therefore
3 preempted by CCR section 5416, unconstitutional, and void. (*City of Riverside, supra*, 56 Cal.4th
4 at p. 743; *O’Connell, supra*, 41 Cal.4th at p. 1067; *Sherwin-Williams Co. v. City of Los Angeles*
5 (1993) 4 Cal.4th 893, 897; see Cal. Const., art. XI, § 7.)

6 37. Respondents/defendants are aware that CCR section 5416 mandates that licensed
7 cannabis retailers can deliver to any physical address in the state, subject to the enumerated
8 exceptions in that section. Santa Cruz County is currently a plaintiff, along with several California
9 cities, in a lawsuit against the BCC and BCC Chief Lori Ajax, seeking to declare CCR section
10 5416(d) invalid. (*County of Santa Cruz v. Bureau of Cannabis Control*, Super. Ct. Fresno County,
11 No. 19CECG01224.) Santa Cruz County and the other plaintiffs allege in the Fresno County
12 action that CCR section 5416(d) conflicts with the plain language of the enacting statutes by
13 preventing localities from regulating deliveries. (MJN, Exh. C, p. 2, ¶¶ 1-3.;). In describing the
14 scope of CCR section 5416(d), the complaint specifically alleges that “[CCR section] 5416(d)
15 permits commercial cannabis deliveries to *any* physical address in the State, subject only to the
16 BCC regulations themselves.” (MJN, exh. C, p. 6, ¶ 26, emphasis in original.) Although the
17 Fresno County lawsuit seeks to have CCR section 5416(d) declared invalid, there has been no
18 judicial order staying the enforcement of CCR section 5416(d) or otherwise excusing Santa Cruz
19 County from complying with CCR section 5416(d). (MJN, exh. D)

20 **Respondents/defendants send a cease and desist letter to East of Eden, ordering East of Eden**
21 **to stop delivering cannabis to unincorporated Santa Cruz County under threat of**
22 **prosecution or other action, in violation of CCR section 5416(d).**

23 38. On Saturday, May 18, 2019, Mike Bitar, vice-president of retail for Grupo Flor,
24 was personally served with the Cease and Desist letter addressed to East of Eden on behalf of
25 respondent/defendants Santa Cruz County, the Santa Cruz County Administrative Office, and/or
26 the Santa Cruz County Cannabis Licensing office; the letter was signed by respondent/defendant

1 LoForti. (See exh. 1.)³

2 39. The Cease and Desist Letter states that the Santa Cruz County Cannabis Licensing
3 Office had “received information indicating that [East of Eden] is conducting illegal cannabis
4 delivery operations in the unincorporated area of Santa Cruz County.” (Exh. 1.) The supposed
5 illegal activities were (1) East of Eden’s delivery of cannabis to unincorporated Santa Cruz County
6 without a license issued by Santa Cruz County, as required by Santa Cruz County Code, chapter
7 7.130, sections 7.130.050, subdivision (A) and 7.130.110, subdivision (F)(1); and (2) East of
8 Eden’s failure to pay local taxes for deliveries made to unincorporated Santa Cruz County.

9 40. The Cease and Desist Letter did not acknowledge the fact that CCR section 5416(d)
10 permits a licensed cannabis retailer to make deliveries to any jurisdiction in the state or that it is
11 impossible for East of Eden to deliver cannabis to Santa Cruz County without violating Santa Cruz
12 County’s ban on deliveries by out-of-county retailers. (See Santa Cruz County Code, ch. 7.130,
13 §§ 7.130.050, subds. (A) & (C), 7.130.090, 7.130.110, subd. (F)(1).)

14 41. The Cease and Desist Letter ordered East of Eden “to immediately stop all
15 activities related to mobile delivery of cannabis to consumers within unincorporated Santa Cruz
16 County” and to pay taxes on any deliveries made to Santa Cruz County to date. (Exh. 1.) The
17 Cease and Desist Letter threatened that, if East of Eden did not halt all deliveries to
18 unincorporated Santa Cruz County, the Santa Cruz County Cannabis Licensing Office would take
19 one or more enforcement actions, including

- 20 • Contacting the Santa Cruz County Sheriff’s Office for criminal investigation;
- 21 • Filing a complaint with the BCC and requesting that East of Eden’s state license be
22 revoked;
- 23 • Confiscating any cannabis plants or products being delivered to unincorporated
24 Santa Cruz County;
- 25 • Conducting an administrative hearing and seeking civil penalties—up to \$7,500 per
26 violation, per day—and injunctive relief;

27
28 ³ Exhibits 1 through 3 are attached to this Petition/Complaint.

- Referring the matter to Santa Cruz county counsel for civil litigation;
- Referring the matter to the Santa Cruz County District Attorney for criminal prosecution;
- Removing East of Eden or affiliated entities from eligibility for future license approval in unincorporated Santa Cruz County; and
- Seeking assistance from other state and/or federal authorities.

42. The Cease and Desist Letter is dated March 13, 2019, but LoForti confirmed in an email sent on Wednesday, May 22, 2019, to Grupo Flor's then-general counsel and current Chairman of the Board, Gavin Kogan, that an attempt to serve the letter prior to May 18, 2019 had been unsuccessful. (See exh. 2.)

43. In the same email, LoForti informed Kogan that, because East of Eden's delivery operations had not ceased in the three days since the Cease and Desist Letter was served, "[e]nforcement actions and civil fines are pending." (See exh. 2.)

East of Eden immediately takes steps to pay taxes on past deliveries to unincorporated Santa Cruz County, but halts future deliveries—even though Santa Cruz County's prohibition on deliveries is preempted by state law—because the enforcement actions threatened by respondents/defendants could result in irreparable, business-ending harm and criminal liability.

44. Upon receipt of the Cease and Desist Letter, East of Eden immediately took steps to comply with Santa Cruz County's cannabis tax rules. East of Eden had not previously believed it was required to pay Santa Cruz's cannabis tax because East of Eden was paying cannabis taxes in Monterey County, where its sales took place.

45. On May 29, 2019, Kogan emailed LoForti to confirm that East of Eden had applied for a Santa Cruz County Cannabis Business Tax Registration, that the application had been processed, and that East of Eden would submit reports for past delivery activity as required. (See exh. 3.)

46. In the same email, Kogan also informed LoForti that Santa Cruz County's prohibition of East of Eden's mobile deliveries to locations within unincorporated Santa Cruz

1 County violates state law. Kogan asked if there was any administrative process by which East of
2 Eden could contest the Cease and Desist Letter.

3 47. LoForti replied that there was no administrative process to contest the Cease and
4 Desist Letter. He explained that there is an administrative appeal process for citations and
5 violations of the county code, but that he had reached out to East of Eden with the Cease and
6 Desist Letter to avoid having to issue any citations. LoForti further explained that if East of Eden
7 continued to deliver within unincorporated Santa Cruz County, the Santa Cruz County Cannabis
8 Licensing Office would issue civil citations to East of Eden, and East of Eden could appeal the
9 citations through the county's standard process.

10 48. LoForti noted the *pending* lawsuit against the BCC to invalidate the state's delivery
11 requirements, but did not acknowledge that CCR section 5416(d) remains in effect. He informed
12 Kogan that he would continue to monitor East of Eden's online ordering program and proceed
13 with enforcement actions if East of Eden continued its operations.

14 49. Faced with the threat of civil and criminal liability, fines in the tens (if not
15 hundreds) of thousands of dollars, and the possible loss of its state retail license, East of Eden
16 halted delivery operations to unincorporated Santa Cruz County on or about June 3, 2019, even
17 though Santa Cruz County's prohibition on delivery violates state law. As a result, and as further
18 alleged below, East of Eden is suffering, and will continue to suffer severe economic harm.

19 50. In the time since it has stopped deliveries to unincorporated Santa Cruz County,
20 East of Eden's retail sales via delivery have dropped by 38%, and East of Eden is losing over
21 \$1,000 a day for each day that it continues to limit its sales reach. Furthermore, East of Eden has
22 incurred incalculable reputational harm, confirmed by the many angry calls it has received from
23 frustrated customers located in Santa Cruz County since halting deliveries. In the current business
24 climate, even a short-term absence from the market can result in the loss of long-term customers,
25 and East of Eden anticipates that it will have to expend substantial additional sums to regain the
26 trust of its customers in Santa Cruz County.

27 51. The unavailability of any administrative procedure to appeal the Cease and Desist
28 Letter means East of Eden has no way, other than this Petition/Complaint, to challenge the Cease

1 and Desist Letter and respondents/defendants' violation of state law, without risking criminal
2 charges, the loss of its state license, and other harsh consequences as threatened in the Cease and
3 Desist Letter.

4 **FIRST CAUSE OF ACTION**

5 **WRIT OF MANDATE TO VACATE CEASE AND DESIST LETTER**

6 (Code Civ. Proc., § 1085)

7 Against All Respondents/Defendants

8 52. Petitioner East of Eden realleges and incorporates by reference each and every
9 allegation contained in paragraphs 1-51 as if fully set forth herein.

10 53. The provisions of the Santa Cruz County Code that require cannabis retailers
11 making deliveries to locations within unincorporated Santa Cruz County to hold a Santa Cruz
12 local storefront dispensary license, thereby precluding all licensed out-of-county retailers
13 (including East of Eden) from making deliveries to unincorporated Santa Cruz County, are in
14 conflict with state law. (Compare Santa Cruz County Code, ch. 7.130, §§ 7.130.050, subds. (A) &
15 (C), 7.130.090, 7.130.110, subds. (A) & (F) with Cal. Code Regs., tit. 16, § 5416, subd. (d).)

16 54. These provisions of the Santa Cruz County Code, to the extent they conflict with
17 state law, are preempted and therefore void. (*City of Riverside, supra*, 56 Cal.4th at p. 743.)

18 55. Respondents/defendants' Cease and Desist Letter, served on East of Eden on May
19 18, 2019, is an attempt to enforce Santa Cruz County's preempted, void cannabis delivery
20 restrictions. By ordering East of Eden to stop all deliveries to unincorporated Santa Cruz County,
21 under threat of, inter alia, civil and criminal liability and loss of its state retail license,
22 respondents/defendants are in violation of CCR section 5416(d).

23 56. East of Eden has no available administrative remedies.

24 57. East of Eden has no plain, speedy, and adequate remedy in the ordinary course of
25 law, other than the relief sought herein.

26 58. An actual controversy has arisen and now exists between East of Eden and
27 respondents/defendants as to the effect of CCR section 5416(d) on Santa Cruz County's attempt to
28 enforce its ban on cannabis deliveries by companies located outside the county and fully licensed

1 in the jurisdictions where they maintain their licensed premises.

2 59. East of Eden has suffered, and continues to suffer, damages as a result of
3 respondents/defendants' violation of CCR section 5416(d).

4 60. Under Code of Civil Procedure, section 1085, East of Eden is entitled to a writ of
5 mandate ordering respondents/defendants to vacate the Cease and Desist Letter and permit East of
6 Eden to resume deliveries to unincorporated Santa Cruz County.

7 **SECOND CAUSE OF ACTION**

8 **DECLARATORY AND INJUNCTIVE RELIEF**

9 (Code Civ. Proc., §§ 526, 527, 1060)

10 Against All Respondents/Defendants

11 61. Plaintiff East of Eden realleges and incorporates by reference each and every
12 allegation contained in paragraphs 1-60 as if fully set forth herein.

13 62. An actual controversy has arisen and now exists between East of Eden and
14 respondents/defendants as to the effect of CCR section 5416(d) on Santa Cruz County's attempt to
15 enforce its ban on cannabis deliveries by companies located outside the county and fully licensed
16 in the jurisdictions where they maintain their licensed premises.

17 63. East of Eden takes the position that CCR section 5416(d) preempts and renders
18 void the provisions of the Santa Cruz County Code prohibiting licensed out-of-county cannabis
19 retailers from making deliveries to customers located within unincorporated Santa Cruz County.
20 On that basis, East of Eden contends that any attempt by respondents/defendants to enforce their
21 ban on deliveries to unincorporated Santa Cruz County by out-of-county retailers is invalid and in
22 violation of state law.

23 64. Respondents/defendants contend that they are entitled to enforce Santa Cruz
24 County's requirement that cannabis retailers making deliveries to unincorporated Santa Cruz
25 County possess a locally issued storefront dispensary license, effectively banning deliveries by
26 out-of-county retailers, even though CCR section 5416 prohibits municipalities from preventing
27 deliveries by cannabis businesses validly licensed by their locality of origin.

28 65. East of Eden, and all other similarly situated cannabis retailers complying with

1 state licensing and delivery regulations but located and licensed outside Santa Cruz County, are
2 subject to potential civil and criminal liability, administrative fines, and loss of state licenses,
3 unless relief is granted.

4 66. East of Eden desires a judicial determination and declaration of the parties' rights
5 and duties with respect to the validity and enforceability of Santa Cruz County Code, Chapter
6 7.130, sections 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110, subdivisions (A)
7 and (F), to the extent those sections prevent cannabis retailers located and licensed outside Santa
8 Cruz County from making cannabis deliveries to locations within unincorporated Santa Cruz
9 County.

10 67. East of Eden seeks a determination of the following questions:

- 11 • Do Santa Cruz County Code, chapter 7.130, sections 7.130.050, subdivisions (A)
12 and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F), conflict with CCR
13 section 5416(d), to the extent those Santa Cruz County Code provisions prevent
14 cannabis retailers located and licensed outside Santa Cruz County from making
15 cannabis deliveries to locations within unincorporated Santa Cruz County?
- 16 • Are Santa Cruz County Code, chapter 7.130, sections 7.130.050, subdivisions (A)
17 and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F), preempted by CCR
18 section 5416(d) and therefore void, to the extent those Santa Cruz County Code
19 provisions prevent cannabis retailers located and licensed outside Santa Cruz
20 County from making cannabis deliveries to locations within unincorporated Santa
21 Cruz County?
- 22 • Are respondents/defendants entitled to continue to enforce Santa Cruz County
23 Code, chapter 7.130, sections 7.130.050, subdivisions (A) and (C), 7.130.090, and
24 7.130.110, subdivisions (A) and (F), to the extent they conflict with CCR section
25 5416(d)?

26 68. Respondents/defendants' wrongful enforcement of Santa Cruz County Code,
27 chapter 7.130, sections 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110,
28 subdivisions (A) and (F), to prevent East of Eden—and, potentially, other similarly situated

1 cannabis retailers—from making cannabis deliveries to unincorporated Santa Cruz County has
2 caused great and irreparable injury to East of Eden, and will continue to do so unless enjoined by
3 this court.

4 69. Injunctive relief is proper because Santa Cruz County Code, chapter 7.130, sections
5 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F), conflict
6 with CCR section 5416(d) to the extent they prevent all out-of-county retailers from making
7 deliveries to locations within unincorporated Santa Cruz County, and are therefore preempted and
8 unconstitutional; and East of Eden has suffered and will continue to suffer irreparable injury as a
9 result of Santa Cruz County’s enforcement of the unconstitutional code provisions. (See Cal.
10 Const., art. XI, § 7; *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th
11 1107, 1116 [a county law that conflicts with state law is unconstitutional as it violates article XI,
12 section 7, of the California Constitution]; *Jamison v. Department of Transportation* (2016) 4
13 Cal.App.5th 356, 363-364 [public statute may be enjoined “ ‘where the statute is unconstitutional
14 and there is a showing of irreparable injury’ ”].)

15 **PRAYER**

16 WHEREFORE, plaintiff and petitioner prays for relief as follows:

17 **On the first cause of action for writ of mandate**

18 1. For a writ of mandate commanding respondents/defendants to vacate the Cease and
19 Desist Letter and allow East of Eden to resume deliveries to unincorporated Santa Cruz County.

20 **On the second cause of action for declaratory and injunctive relief**

21 2. For a declaration and judgment that Santa Cruz County Code, chapter 7.130,
22 sections 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F),
23 are preempted by CCR section 5416(d), to the extent those Santa Cruz County Code provisions
24 prevent cannabis retailers located and licensed outside Santa Cruz County from making cannabis
25 deliveries to locations within unincorporated Santa Cruz County;

26 3. For a declaration and judgment that Santa Cruz County Code, chapter 7.130,
27 sections 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F),
28 are void and unenforceable, to the extent those Santa Cruz County Code provisions prevent

1 cannabis retailers located and licensed outside Santa Cruz County from making cannabis
2 deliveries to locations within unincorporated Santa Cruz County;

3 4. For a declaration and judgment that, under CCR section 5416(d),
4 respondents/defendants may not enforce Santa Cruz County Code, chapter 7.130, sections
5 7.130.050, subdivisions (A) and (C), 7.130.090, and 7.130.110, subdivisions (A) and (F), to the
6 extent those Santa Cruz County Code provisions prevent cannabis retailers located and licensed
7 outside Santa Cruz County from making cannabis deliveries to locations within unincorporated
8 Santa Cruz County, or otherwise prevent cannabis retailers located and licensed outside Santa
9 Cruz County from making cannabis deliveries to unincorporated locations within Santa Cruz
10 County;

11 5. For a permanent injunction compelling respondents/defendants to refrain from
12 enforcing Santa Cruz County Code, chapter 7.130, sections 7.130.050, subdivisions (A) and (C),
13 7.130.090, and 7.130.110, subdivisions (A) and (F), to the extent those Santa Cruz County Code
14 provisions prevent cannabis retailers located and licensed outside Santa Cruz County from making
15 cannabis deliveries to locations within unincorporated Santa Cruz County, or taking any other
16 actions to violate CCR section 5416(d).

17 **On all causes of action**

18 6. For costs of the suit;

19 7. For attorney fees as authorized by Code of Civil Procedure section 1021.5 and
20 other provisions of law; and

21 8. For such other and further relief as the court deems just and proper.

1 July 12, 2019

McDowall•Cotter, A.P.C.

David S. Rosenbaum

Jennifer A. Emmaneel

Horvitz & Levy LLP

David M. Axelrad

Allison W. Meredith

Andrea L. Russi

By: 

David S. Rosenbaum,

Jennifer A. Emmaneel,

Attorneys for Plaintiff and Petitioner

EAST OF EDEN CANNABIS CO.

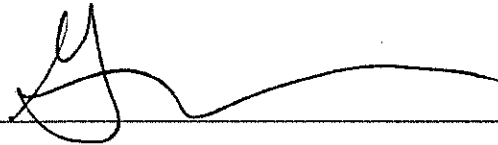
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VERIFICATION

I, Gavin Kogan, declare:

I am chairman of the board of BAK Festivals a.k.a. Grupo Flor (Grupo Flor). East of Eden Cannabis Co. (East of Eden), the petitioner and plaintiff in this action, is a wholly owned subsidiary of Grupo Flor. I am familiar with all aspects of East of Eden's business and authorized to execute this verification on behalf of petitioner and plaintiff. I have read the foregoing Petition for Writ of Mandate and Verified Complaint for Declaratory and Injunctive Relief (Petition/Complaint) and I am familiar with its contents. The facts stated in the Petition/Complaint are personally known to me, and I know these facts as stated to be true, except where the facts are supported by other documents. The exhibits attached to this Petition/Complaint are true and correct copies of documents sent to or received by me or East of Eden.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on 11th day of July, 2019 in Selinas, California.



Gavin Kogan

EXHIBIT 1



County of Santa Cruz

COUNTY ADMINISTRATIVE OFFICE
701 OCEAN STREET, SUITE 520, SANTA CRUZ, CA 95060-4073
(831) 454-2100 FAX: (831) 454-3420
CARLOS J. PALACIOS, COUNTY ADMINISTRATIVE OFFICER

East of Eden Cannabis Co.
c/o Gavin Kogan
514 Work Street
Salinas, CA 93901

March 13, 2019

Subject: County Code Violation
Entity: East of Eden Cannabis Co.

ATTENTION!

The Santa Cruz County Cannabis Licensing Office has received information indicating that the above-referenced business entity is conducting illegal cannabis delivery operations in the unincorporated area of Santa Cruz County. Be advised that Santa Cruz County Code Chapter 7.130 restricts mobile delivery of cannabis in the unincorporated area to (storefront) dispensaries that possess a valid Dispensary License issued by Santa Cruz County. (See SCCC, Sections 7.130.050(A) and 7.130.110(F)).

The delivery service operating under the business name "East of Eden Cannabis Co." is not affiliated with any licensed dispensaries within Santa Cruz County and is not authorized to deliver cannabis in unincorporated Santa Cruz County.

In addition, all cannabis businesses conducting operations in the unincorporated area are required to pay a local gross receipts tax under Santa Cruz County Code Chapter 4.06 ("Cannabis Business Tax"). Currently, the rate is set at 7% of gross receipts for all retail activity. The Santa Cruz County Auditor has confirmed that your business does not have a tax account, and that you are not paying Cannabis Business Taxes.

You are hereby ordered to immediately stop all activities related to mobile delivery of cannabis to consumers within unincorporated Santa Cruz County. Moreover, you are hereby ordered to contact the Santa Cruz County Auditor, open a Cannabis Business Tax account, and pay taxes on any deliveries conducted in Santa Cruz County to date, and in the future. Failure to do so will result in one or more of the following enforcement actions:

- Contacting the Santa Cruz County Sheriff's Office for criminal investigation;
- Filing a complaint with the California Bureau of Cannabis Control and requesting that any State license that you hold be revoked;
- Confiscating cannabis plants and/or products being delivered to addresses in unincorporated Santa Cruz County;
- Posting a Notice of Violation on any and all real property located in unincorporated Santa

- Cruz County that is found to be associated with the illegal delivery operation;
- Conducting an Administrative Hearing and seeking an award of civil penalties (up to \$7,500 per violation, per day) and injunctive relief;
 - Notifying any lenders, lien holders, or other parties having an interest in associated real property within unincorporated Santa Cruz County;
 - Referring the matter to County Counsel for civil litigation, seeking civil penalties and injunctive relief;
 - Seeking reimbursement of all costs of enforcement, including attorney's fees;
 - Referring the matter to the County District Attorney for criminal prosecution;
 - Removing you or affiliated entities from eligibility for future cannabis license approval in unincorporated Santa Cruz County.
 - Seeking assistance from other State and/or federal authorities.

You can avoid enforcement action by taking the following steps to resolve the violation:

1. Cease all delivery operations in unincorporated Santa Cruz County.
2. Resolve all outstanding tax obligations for sales already conducted in Santa Cruz County, and pay taxes on any future (illegal) sales conducted in Santa Cruz County.

If the above action is not taken by **March 17, 2019** enforcement action will commence.

We strongly urge your prompt attention to this matter.

Respectfully,



Sam LoForti
Cannabis Licensing Manager
Office: (831) 454-3426
Email: Sam.LoForti@santacruzcounty.us

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EXHIBIT 2



Gavin Kogan <gavin@grupoflor.com>

East of Eden Cannabis Company - Delivery operations in south Santa Cruz County

1 message

Sam LoForti <Sam.LoForti@santacruzcounty.us>

Wed, May 22, 2019 at 9:59 AM

To: "gavin@grupoflor.com" <gavin@grupoflor.com>

Cc: Steve Carney <Steve.Carney@santacruzcounty.us>, "mike@grupoflor.com" <mike@grupoflor.com>, "p.henderson@grupoflor.com" <p.henderson@grupoflor.com>

Good morning Gavin,

On Saturday May 18, 2019 I officially served Mustafa aka Mike Bitar a cease and desist letter on behalf of Santa Cruz County at 3:05 pm in Aptos at the Seascape Resort. Your delivery operations within the southern portion of Santa Cruz County do not comply with the County Code as detailed in the attached letter. The original letter was sent to you at your Work Street address on March 13th via certified mail. The letter was unclaimed and sent back to the County. I've attached the original letter and a copy of the certified mail receipt for your records. This email is being sent because it appears your operations have not ceased and you have not contacted the tax administrator. Enforcement actions and civil fines are pending and we will be requesting all delivery receipts for your operations in the unincorporated portions of Santa Cruz County. These records must be maintained by East of Eden Cannabis Company per section 5420 of the Bureau of Cannabis Control Text of Regulations, California Code of Regulations Title 16, Division 42.

As stated by Lori Ajax of the BCC on May 7th. "Cities and Counties can be more restrictive then our (BCC) regulations, but they would be enforcing those on their own. The State will not be enforcing those (regulations)."

Samuel LoForti

Cannabis Licensing Manager

County of Santa Cruz

831.454.3426

Sam.LoForti@santacruzcounty.us

2 attachments 03132019_C&D_Letter.pdf
133K Certified Mail Reciept.pdf
20K

EXHIBIT 3



Gavin Kogan <gavin@grupoflor.com>

RE: East of Eden Cannabis Co.

1 message

Sam LoForti <Sam.LoForti@santacruzcounty.us>
To: Gavin Kogan <gavin@grupoflor.com>

Wed, May 29, 2019 at 1:32 PM

Gavin,

There is an administrative appeal process for citations and violations of County Code. We proactively reached out to East of Eden to avoid having to issue any citations regarding this matter. If East of Eden continues to violate County Code we will proceed with issuing civil citations which can be appealed via the standard County process. All appeals are heard before a an outside hearing officer.

There is a pending lawsuit against the BCC with regard to this topic and I found it very interesting, on May 7th, when Lori Ajax put out a statement where she said the BCC position was that localities can enforce their own rules but the BCC would not support enforcement actions with regard to delivery services. I encourage you and the industry groups you are working with to investigate the public stance that Lori and the BCC have taken with regard to this issue.

Please let me know if East of Eden will continue to operate in the unincorporated areas of Santa Cruz County? We will continue to monitor your online ordering program and proceed with enforcement actions shortly if East of Eden continues its operations. I hope you and your team understand our efforts to resolve this prior to enforcement actions.

Samuel LoForti

Cannabis Licensing Manager

County of Santa Cruz

831.454.3426

Sam.LoForti@santacruzcounty.us

From: Gavin Kogan <gavin@grupoflor.com>
Sent: Wednesday, May 29, 2019 12:58 PM
To: Sam LoForti <Sam.LoForti@santacruzcounty.us>
Subject: East of Eden Cannabis Co.

Good afternoon Sam,

We want to confirm with you that East of Eden Cannabis Co. has obtained from Santa Cruz County ("County") the confirmation that our Cannabis Business Tax Registration Application has been processed and we are submitting reports for past activity as required.

We also want to confirm with you that we believe the County code section that restricts mobile delivery of cannabis in the unincorporated areas to (storefront) dispensaries that possess a valid Dispensary License issued by the Santa Cruz County violates state law. We are in contact with the BCC and industry trade groups concerning the County's position in that regard.

Like you, we simply want these matters amicably resolved. To that end, do you know whether there is a County appellate process whereby we can administratively contest the portions you cite of the County Code Sec. 7.130 in your March 13, 2019 letter?

Thank you,

—
Gavin Kogan

Co-Founder

(831) 262-9134 | gavin@grupoflor.com | www.grupoflor.com

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EXHIBIT 37

1 DANA McRAE, State Bar No. 142231
County Counsel, County of Santa Cruz
2 MELISSA C. SHAW, State Bar No. 232775
Assistant County Counsel
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Superior Court of California
County of Santa Cruz
9/5/2019 4:21 PM
Alex Calvo, Clerk
By: Helena S. Hanson, Deputy

Helena S. Hanson

5 Attorneys for Defendants and Respondents
6 COUNTY OF SANTA CRUZ; COUNTY OF SANTA CRUZ
ADMINISTRATIVE OFFICE; COUNTY OF SANTA CRUZ
7 CANNABIS LICENSING OFFICE; and SAMUEL
LOFORTI, CANNABIS LICENSING MANAGER,
8 IN HIS OFFICIAL CAPACITY

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CRUZ

12 EAST OF EDEN CANNABIS CO., 13 14 Plaintiff and Petitioner, 15 v. 16 SANTA CRUZ COUNTY; SANTA CRUZ COUNTY ADMINISTRATIVE OFFICE; 17 SANTA CRUZ COUNTY CANNABIS LICENSING OFFICE; SAMUEL LOFORI, 18 CANNABIS LICENSING MANAGER, IN HIS OFFICE, IN HIS OFFICIAL CAPACITY; 19 DOES 1-10, 20 Defendants and Respondents.	Case No. 19CV02072 DEFENDANTS AND RESPONDENTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION <i>[Filed with Declaration of Melissa Shaw; Declaration of Samuel LoForti; Request for Judicial Notice; Opposition to Plaintiff's Motion for Judicial Notice.]</i> Date: September 18, 2019 Time: 8:30 a.m. Dept.: 5
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1
2 **I. INTRODUCTION.**

3 When Californians voted to legalize recreational cannabis in 2016, they were promised a
4 system under which local jurisdictions would retain their authority to regulate commercial cannabis
5 activity. They did this after California courts had already made clear that local authority to regulate
6 cannabis activity was central to a municipality's police power and not preempted by state law.
7 Consistent with this, when the State Legislature enacted statutes to implement Proposition 64, it
8 preserved local jurisdictions' authority to prohibit or otherwise regulate the operation of any kind of
9 cannabis business, including cannabis delivery. As further proof of this, the State Legislature
10 recently let a proposed bill die (Senate Bill 1302) that would have substantially interfered with the
11 local control of cannabis deliveries. In short, local control is a fundamental principle of California
12 cannabis law. Based on that principle, the County of Santa Cruz regulates cannabis deliveries via
13 County Code Chapter 7.130.

14 After the failure of SB 1302, the State's Bureau of Cannabis Control (the "BCC") adopted an
15 administrative rule (16 C.C.R., § 5416(d) or "Section 5416(d)") that addressed cannabis deliveries.
16 Plaintiff East of Eden Cannabis Co. ("Plaintiff") is seeking a preliminary injunction on the faulty
17 assertion that Section 5416(d) effectively removed local control over cannabis deliveries. Of course,
18 as an administrative agency, the BCC could not legally do this, and as demonstrated below, it in fact
19 did not do this. If the BCC did so, such a rule would be void, and have no effect, because it would
20 directly contradict established California law on the topic. Specifically, such a rule would contravene
21 the plain text of Business and Professions Code Section 26200, which preserves local authority to
22 regulate the operation of all cannabis businesses, as well as the plain text of Business and
23 Professions Code Section 26090, which makes clear that local authority to regulate extends to
24 cannabis deliveries.

25 In order to obtain a preliminary injunction, Plaintiff must show both a likelihood of success
26 on the merits of its claims and a threat of suffering irreparable harm. Here, Plaintiff's motion is
27 solely based on the misleading argument that the County's restriction of cannabis deliveries by
28 locally licensed retailers "conflicts with state law." Plaintiff does so by misreading Section 5416(d)

1 and ignoring the rest of the law on the topic. In fact, the Santa Cruz County Code is fully consistent
2 with both the intent and the plain text of California law. Because Plaintiff's sole argument is flatly
3 incorrect, it cannot demonstrate a likelihood success on the merits of this action.

4 Equally important, Plaintiff cannot meet its heightened burden of showing that irreparable
5 harm will occur if its motion is not granted. Plaintiff concedes that its asserted damages, if any, are
6 monetary in nature and limited to business it would like to conduct in a jurisdiction in which it is not
7 licensed. As such, any harm resulting from the denial of this motion is not "irreparable." Moreover,
8 the harm to the County if the injunction is issued will be considerably greater than the harm to
9 Plaintiff if the injunction is not granted.

10 For the reasons set forth below, the County respectfully requests that this Court deny
11 Plaintiff's motion for preliminary injunction.

12 **II. SUMMARY OF RELEVANT FACTS.**

13 **A. California Voters Legalize The Use Of Recreational Cannabis.**

14 In November 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act
15 ("AUMA" or "Prop. 64"). Prop. 64 largely legalized the personal possession and consumption of
16 recreational cannabis by adults aged 21 and older. (Proposition 64 [Nov. 2016] ("Prop. 64"), § 4,
17 codified in relevant part at Health & Safety Code Sections 11362.1-11362.45.) It also established a
18 framework for regulating commercial cannabis activities under which such activities would only be
19 lawful if conducted under approval at both the state *and the local* level. (Prop. 64, § 6, codified in
20 relevant part at Bus. & Prof. Code, §§ 26000-26211.)

21 In June 2017, shortly after the passage of Proposition 64, the California Legislature enacted
22 the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which
23 effectively integrated California's medical and recreational cannabis regulatory systems, codified
24 certain provisions of Prop. 64, and added implementation measures. MAUCRSA is set forth at
25 Business and Professions Code Section 26000, et seq. Specific to this case, the Legislature enacted
26 Business & Professions Code Sections 26200 and 26090, which contain language relating to the
27 adoption of local regulatory ordinances and the delivery of cannabis. (Bus. & Prof. Code §§
28 26200(a)(1), 26090(e).) It also gave authority to the California Bureau of Cannabis Control

1 (“BCC”) to “make and prescribe reasonable rules and regulations as may be necessary to implement,
2 administer, and enforce [its] respective duties...” (i.e., to enforce state cannabis laws). (Bus. & Prof.
3 Code § 26013(a).)

4 Local control is a fundamental underpinning of Prop. 64. The proposition made clear that
5 state law “could not be interpreted to supersede or limit the authority of a local jurisdiction to adopt
6 and enforce local ordinances to regulate” cannabis businesses. (Prop. 64, § 6, codified in relevant
7 part at Bus. & Prof. Code § 26200(a)(1).) This local regulatory authority extends as far as the power
8 “to completely prohibit the establishment or operation of one or more types of [cannabis business]
9 within the local jurisdiction.” (*Id.*) Later, legislative amendments to Business and Professions Code
10 Section 26200 further underscored that state law did not “supersede or limit existing local authority”
11 for, among other things, “enforcement of local zoning requirements or local ordinances, or
12 enforcement of local license, permit, or other authorization requirements.” (Cal State. 2017, ch. 27
13 (Sen. Bill No. 94 [2017-2018 Reg. Sess.], § 102, codified in relevant part at Bus. & Prof. Code §
14 26200(a)(2).)

15 This regulatory framework clearly includes and applies to cannabis deliveries. Prop. 64
16 defined “commercial” cannabis activity to include, among other things, the “delivery” of cannabis
17 and cannabis products. (Prop. 64, § 6, codified in relevant part at Bus. & Prof. Code § 26001(k).)
18 Eliminating any doubt, Prop. 64 provided that local jurisdictions would be obliged to allow cannabis
19 deliveries only if those deliveries were performed “in compliance with ... local law as adopted under
20 Section 26200” – the section of the Business and Professions Code preserving local authority to
21 regulate commercial cannabis operations. (Prop. 64, § 6, codified in relevant part at Bus. & Prof.
22 Code § 26090(e).)

23 Overall, Prop. 64 promised voters that its regulatory scheme “safeguards local control,
24 allowing local governments to regulate marijuana-related activities.” (Prop. 64, § 2(E).) And,
25 although the Legislative Analyst’s official analysis of Prop. 64 informed voters that local
26 jurisdictions “could not ban the *transportation* of marijuana *through* their jurisdictions, voters were
27 assured that, otherwise, “cities and counties could regulate nonmedical marijuana businesses.”
28 (Analysis by the Legislative Analyst, Prop. 64 [Nov. 2016], p. 93 [emphasis added].) Likewise,

1 voters were assured that “[l]ocal governments will continue to have the ability to regulate where and
2 how ... businesses operate.” (Id. at pp. 91-92.) The official argument in favor of Prop. 64 says it
3 best – “64 preserves local control.” (Plaintiff’s Motion for Judicial Notice (“MJN”) at Exhibit C
4 *County of Santa Cruz et al. v. Bureau of Cannabis Control, et al*, Fresno County Superior Court
5 Case No. 19CECG01224 at its internal Exhibit A “Relevant Excerpts From California General
6 Election Official Voter Information Guide at pp. 3. Official Voter Information Guide (Nov. 2016, p.
7 921 of MJN.)

8 **B. The County Of Santa Cruz Regulates The Delivery Of Cannabis Locally.**

9 The County of Santa Cruz regulates cannabis retail operations via Santa Cruz County Code
10 (“SCCC”) Chapter 7.130. Chapter 7.130 was adopted to “provide local rules to regulate cannabis
11 dispensaries in the unincorporated area of Santa Cruz County” (SCCC § 7.130.010.) The Chapter is
12 intended to be interpreted to be compatible with Federal and State enactments and in furtherance of
13 the public purposes that those enactments encompass. (SCCC § 7.130.010.) The underlying purpose
14 of Chapter 7.130 is to “mitigate the negative impacts and secondary effects associated with ongoing
15 cannabis activities including, but not limited to, demands placed on law enforcement and
16 administrative resources; neighborhood disruption; the exposure of children to cannabis; drug sales
17 to minors and adults; fraud in issuing, obtaining, or using cannabis recommendations; robberies;
18 burglaries; assaults; drug trafficking and other violent crimes.” (Id.) In short, Chapter 7.130 was
19 created and adopted with the purpose to mitigate potential negative impacts on the County and its
20 residents related to retail sales of cannabis.

21 Santa Cruz County Code § 7.130.050 (C) states that it is unlawful and shall constitute a
22 public nuisance for anyone other than a locally licensed dispensary to engage in retail sales of
23 cannabis, including “mobile delivery of cannabis purchased by consumers online or over the
24 telephone.” (SCCC § 7.130.050(C).) In addition, Section 7.130.110 (F)(1) specifically states that
25 “[...]only locally licensed dispensaries may engage in mobile delivery of cannabis.” These
26 provisions enable the County to better control who is selling cannabis in the unincorporated area of
27 the County and how they are doing it. They provide specific regulations that are stricter in nature
28 than those provided under state law, provide a basis for a functioning business relationship between

1 regulators and businesses, and help to ensure that all retailers are paying local cannabis business
2 taxes. (See Declaration of Sam LoForti (“LoForti Decl.”, ¶ 6.) These regulations help to provide
3 consistency and stability in the retail cannabis market, avoid the impacts of unfair competition,
4 protect the local economy, and ensure fewer negative impacts on County residents related to
5 cannabis business operations. (*Id.*) These regulations were in place before the BCC recently adopted
6 Section 5416(d).

7 **C. The Failure Of Senate Bill 1302 Underscores The Primacy Of Local Control.**

8 The recent failure of SB 1302 is representative of the Legislature’s understanding that local
9 control was a foundational basis for the passage of Prop. 64. Prop. 64 made clear that any legislative
10 amendments to its provisions must be consistent with the Act’s “purposes and intent” (Prop. 64, §
11 10) and the Legislature has never amended Prop. 64 to reduce local control. However, in 2018 the
12 Legislature considered a bill that would have diminished local control. Senate Bill 1302, which
13 required a two-thirds majority for passage, would have prohibited local jurisdictions from adopting
14 or enforcing “any ordinance that would prohibit a [state] licensee from delivering cannabis within or
15 outside of the jurisdictional boundaries of that local jurisdiction.” (Sen. Bill No.1302 (2017-2018
16 Reg. Sess.), § 1.)

17 As reflected in the Senate Floor Analysis for SB 1302, pursuant to the authority authorized in
18 Prop. 64, most local governments in the state had restricted cannabis deliveries. (MJN Exhibit C
19 *County of Santa Cruz et al. v. Bureau of Cannabis Control, et al*, Fresno County Superior Court
20 Case No. 19CECG01224 at its internal Exhibit E, Sen. Rules Committee, Off. Of Sen. Floor
21 Analyses, Analysis of Sen. Bill No. 1302 [2017-2018 Reg. Sess.], pp. 1133, 1134 of MJN.) A
22 review of the analysis conducted by the Senate Committee on Governance and Finance makes clear
23 that the point of SB 1302 was to address this issue (“Cannabis delivery businesses want to ensure
24 that delivery is allowed in cities and counties throughout the state”). (Request for Judicial Notice
25 (“RJN”) Exh A Sen. Committee on Gov. and Fin., Analysis of Sen. Bill No. 1302 (2017-2018 Reg.
26 Sess.). p. 3.) The analysis makes clear that regardless of its intent, the bill basically removed local
27 control, which was antithetical to Prop. 64. (*Id.*, pp. 3-5.) Ultimately, SB 1302 went nowhere -- it
28 was ordered to the inactive file on May 31, 2018, where it eventually died.

1 **D. The Adoption Of Regulation 5416(d) By The BCC.**

2 In 2017, emergency regulations were adopted by the BCC to implement and interpret
3 MAUCRSA. (Comp. ¶ 22.) On July 13, 2018, the BCC issued a permanent rulemaking package in
4 an effort to adopt the emergency regulations as “permanent” regulations. (Comp. ¶ 23.)

5 Subdivision (d) of Section 5416 was not a part of the original emergency regulations, nor
6 was it included in the second set of emergency regulations adopted six months later. In fact, the
7 language set forth in 5416(d) did not appear until July 13, 2018, just a few weeks after SB 1302 was
8 moved to the inactive file, in the third rule making package. Missing from the analysis is any
9 discussion supporting Plaintiff’s argument that 5416(d) revoked local control over cannabis
10 deliveries. This is not surprising, because the rule in fact did no such thing.

11 In its final form, Section 5416 states that “A delivery employee may deliver to any
12 jurisdiction within the State of California provided that such delivery is conducted in compliance
13 with all delivery provisions of this division.” (16 C.C.R. § 5416(d)).) As authority for the
14 regulation, the BCC cited Business and Professions Code Section 26090, which states that “[a] local
15 jurisdiction shall not prevent delivery of cannabis or cannabis products on public roads by a licensee
16 *acting in compliance with ... local law as adopted under Section 26200*” [emphasis added].
17 Basically, reading the rule and the authority for the rule together, a delivery employee with a state
18 license can deliver to any jurisdiction *only to the extent that such delivery would not violate local*
19 *law*.

20 **E. East Of Eden’s Violation Of Santa Cruz County Code.**

21 Plaintiff is a cannabis retailer licensed by the BCC. It has a permit with the City of Salinas to
22 operate a storefront and retail cannabis delivery business located in Salinas, California. (Comp. ¶ 2.)
23 Plaintiff does not have a license to operate in Santa Cruz County and thus is unable to make
24 deliveries in the unincorporated areas of Santa Cruz County. (Comp. ¶ 3; Santa Cruz County Code
25 §§ 7.130.050, 7.130.090, 7.130.110.)

26 In violation of the Santa Cruz County Code, Plaintiff made deliveries to locations within
27 unincorporated areas of Santa Cruz County. (Comp. ¶ 2.) The County subsequently sent a letter to
28

1 Plaintiff ordering it to cease and desist all activities related to cannabis delivery within the
2 unincorporated area of Santa Cruz County. (Comp. ¶ 3, Comp. Exh. 1.)

3 In response, Plaintiff filed the instant action against the County. Plaintiff alleges that since it
4 stopped delivering to unincorporated Santa Cruz County, it has lost over \$1,000 a day and is
5 suffering “reputational” harm. (Comp. ¶ 50.) This motion for a preliminary injunction seeks an
6 order requiring the County to cease enforcing the County Code sections outlined above.

7 **III. SUMMARY OF ARGUMENT**

8 The sole basis for Plaintiff’s motion is that the County Code conflicts with Section 5416(d),
9 and is thus either preempted, void, or unconstitutional. However, Plaintiff is misreading Section
10 5416(d), which must be read consistently with Prop. 64 and the Business and Professions Code. If
11 Section 5416(d) operates as Plaintiff claims, then it would be void and unenforceable because it is
12 not possible for a state administrative agency to adopt rules that conflict with state law. Given that
13 the sole basis for Plaintiff’s motion (and its complaint) is incorrect, it is highly unlikely that it will
14 succeed on the merits of this case. Moreover, the balance of harms in granting injunctive relief tip
15 sharply in favor of the County. Plaintiff’s damage, to the extent they can prove any, is apparently
16 quantifiable at \$1,000 per day, meaning Plaintiff is not subject to “irreparable harm.” On the other
17 hand, the County’s inability to enforce its regulatory scheme on cannabis deliveries would undercut
18 all of the goals laid out in the LoForti declaration and be a detriment to the citizens of Santa Cruz
19 County.

20 Because Plaintiff cannot meet its burden on either of the elements necessary to obtain a
21 preliminary injunction, the Court should deny Plaintiff’s motion.

22 **IV. THE LEGAL STANDARDS GOVERNING PRELIMINARY INJUNCTIONS**

23 “A preliminary injunction is an extraordinary remedy never awarded as of right.” (*Winter v.*
24 *Natural Res. Defense Council, Inc.* (2008) 555 U.S. 7, 9.) A preliminary injunction’s purpose is to
25 preserve the status quo pending a determination on the merits of an action. (*Jamison v. Department*
26 *of Transportation* (2016) 4 Cal.App.5th 356, 361, citing *SB Liberty, LLC v. Isla Verde Assn., Inc.*
27 (2013) 217 Cal.App.4th 272, 280.)
28

1 The court is charged with evaluating two interrelated factors when determining whether to
2 issue a preliminary injunction: (1) the likelihood that the moving party will ultimately prevail on the
3 merits of its claim; and (2) the balance of harm presented. (*Jamison v. Department of*
4 *Transportation*, 4 Cal.App.5th at 361, citing *Common Cause v. Board of Supervisors* (1989) 49
5 Cal.3d 432, 441-42.) While the court is to evaluate both factors, a trial court “may not grant a
6 preliminary injunction regardless of the balance of interim harm, unless there is some possibility that
7 the plaintiff would ultimately prevail on the merits of the claim.” (*Jamison v. Department of*
8 *Transportation* (2016) 4 Cal.App.5th 356, 362 citing *Butt v. State of California* (1992) 4 Cal.4th
9 668, 678.)

10 The party seeking a preliminary injunction bears the burden of justifying the injunction
11 through sufficient evidence. “It frequently is observed that a preliminary injunction is an
12 extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
13 *showing*, carries the burden of persuasion.” (*Mazurek v. Armstrong* (1997) 520 U.S. 968, 972
14 [emphasis in original].) “[W]hat is at issue here is not even a defendant’s motion for summary
15 judgment, but a plaintiff’s motion for preliminary injunctive relief, as to which the requirement for
16 substantial proof is *much higher*.” (*Id.* [emphasis added].)

17 Where the defendants are public agencies and the plaintiff seeks to restrain them in the
18 performance of their duties, public policy considerations also come into play. It is established that
19 the court is prohibited from granting injunctive relief “[t]o prevent the execution of a public statute
20 by officers of the law for the public benefit.” (Civ. Proc. Code § 526(b)(4); *see also* Civ. Code §
21 3423(d).) While this rule does not preclude a court from enjoining unconstitutional or void acts, it
22 places a heightened burden on the plaintiff to make a “significant showing of irreparable injury.”
23 (*Tahoe Keys Property Owners’ Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th
24 1459, 1471.)

1 **V. PLAINTIFF CANNOT PREVAIL ON THE MERITS BECAUSE THE CODE**
2 **PROVISIONS AT ISSUE DO NOT CONFLICT WITH STATE LAW.**

3 Plaintiff's motion is founded on the argument that Santa Cruz County Code sections
4 7.130.050, 7.130.090 and 7.130.110 conflict with Section 5416(d) and are thus preempted, void, and
5 unconstitutional. (Motion at 7:13-15.) As is explained below, that is not accurate.

6 **A. The County Of Santa Cruz Has The Right To Regulate Deliveries Within The**
7 **Unincorporated Area Of The County.**

8 Plaintiff asserts that the County's "total ban" prohibiting retailers who are not licensed in
9 Santa Cruz County from making deliveries in unincorporated Santa Cruz County conflicts with the
10 State's laws permitting licensed retailers to make deliveries to *any* jurisdiction in the state and is thus
11 preempted and unconstitutional. (Motion at 10:22-26, 11:10-14.) However, this argument solely
12 relies on a tortured reading of Section 5416(d), an administrative rule, and completely ignores the
13 provisions of Prop. 64 and the Business and Professions Code that speak to this issue.

14 **1. Santa Cruz County Code Sections 7.130.050, 7.130.090 and 7.130.110 are consistent with**
15 **Business & Professions Code §§ 26200 and 26090.**

16 Business and Professions Code § 26200 clearly preserves a local jurisdiction's control over
17 all commercial cannabis activity. It states, "[t]his division shall not be interpreted to supersede or
18 limit the **authority of a local jurisdiction to adopt and enforce local ordinances** to regulate
19 businesses licensed under this division...." (Bus. & Prof. Code § 26200(a)(1) [emphasis added].)
20 Likewise, Business & Professions Code § 26090(c) states, "[a] local jurisdiction shall not prevent
21 delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with
22 this division and **local law as adopted under Section 26200.**" (Bus. & Prof. Code § 26090(c)
23 [emphasis added].) Delivery refers to "the commercial transfer of cannabis or cannabis products to a
24 customer." (Bus. & Prof. Code § 26001(k).)

25 Santa Cruz County Code Chapter 7.130 sets forth the County's local regulations regarding
26 retail cannabis businesses, as well as the reasons for them, and specifically states it was drafted to
27 not conflict with state law (SCCC § 7.130.010); it is thus in accordance with Sections 26200 and
28 26090 of the Business and Professions Code. With respect to delivery, the Santa Cruz County Code

1 does not completely ban delivery of cannabis. Instead, it requires that any business delivering
2 cannabis in unincorporated Santa Cruz County have a local license. (SCCC §§ 7.130.050(C),
3 7.130.110(F)(1).) As reflected above, this regulation comports with both the intent and the plain
4 language of state law.

5 The Court should note that in approving the system of local control, the voters were acting
6 after the California Supreme Court, and a number of other courts, had already confirmed that
7 cannabis operations are absolutely subject to municipal regulation. (*See City of Riverside v. Inland*
8 *Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 753 [upholding local
9 ordinance restricting “the use of property to cooperatively or collectively cultivate and distribute
10 medical marijuana”]; *Conejo Wellness Ctr., Inc. v. City of Agoura Hills* (2013) 56 Cal.App.4th 1534;
11 *City of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861; *City of Claremont v. Kruse* (2009) 177
12 Cal.App.4th 1153.) These cases establish that, with regard to cannabis operations, local jurisdictions
13 have “constitutional authority to regulate the particular manner and location in which a business may
14 operate.” (*Hill, supra*, 192 Cal.App.4th at 869; Cal Const., art. XI, § 7.) As an example, in *People ex*
15 *rel. Feuer v. Nestdrop, LLC* (2016) 245 Cal.App.4th 664, the court reviewed an ordinance regulating
16 the distribution and delivery of medical cannabis and affirmed the granting of a preliminary
17 injunction enforcing the ordinance against an app-based delivery-scheduling service. (*Id.* at 668.)
18 Likewise, in another case, the Court of Appeal described the same ordinance as “a municipal
19 initiative on a wholly municipal matter.” (*Safe Life Caregivers v. City of Los Angeles* (2016) 243
20 Cal.App.4th 1029, 1045.)

21 To interpret Section 5416(d) as not allowing local jurisdictions to regulate dispensaries
22 operations within its boundaries would run counter to pre-Prop. 64 law, Prop. 64 itself, and the state
23 statutes implementing Prop. 64. Because Plaintiff’s sole argument is baseless, Plaintiff cannot
24 sustain its burden of showing that it has a likelihood of succeeding on the merits in this case.

25 **2. Plaintiff’s Argument Regarding The “Clarification” Of 5416(d) Is Inaccurate.**

26 Plaintiff argues that Section 5416(d) “clarifies that a delivery employee may deliver to any
27 jurisdiction within the State of California.” (Motion 9:4-6.) In support of the argument, Plaintiff
28 cites to the “Bureau of Cannabis Control California Code of Regulations Title 16, Division 42

1 Medicinal and Adult-Use Cannabis Regulation Initial Statement of Reasons.” (Motion at 9:4-11.)
2 The Court should note that while this “clarification” was indeed in the *initial* statement of reasons
3 for the change, it was *not included* in the final statement of reasons. (See MJN, Exhibit C, *County of*
4 *Santa Cruz et al. v. Bureau of Cannabis Control, et al*, Fresno County Superior Court Case No.
5 19CECG01224 at its internal Exhibit C “Relevant Excerpts from Bureau of Cannabis Control
6 California Code of Regulations Title 16, Division 42 – Medicinal and Adult-Use Cannabis
7 Regulation Final Statement of Reasons” at pp 1050.) Bottom line, in support of its faulty argument,
8 Plaintiff is not even giving the Court all of the relevant information regarding Section 5416(d) itself.

9 The Addendum to the Final Statement of Reasons has a very different analysis of Section
10 5416(d). The Final Statement now simply reads, “[s]ubsection (d) of this section has been amended
11 to clarify that a delivery employee may deliver to any jurisdiction within the State of California
12 *provided that such delivery is conducted in compliance with all delivery provisions of the*
13 *regulations*. This change was necessary for clarity as the Bureau received feedback that this section
14 could be read that all of the delivery rules may not apply.” (Id.)

15 Further insight to the intent behind Section 5416(d) is in the Final Statement of Reasons,
16 Appendix A Bureau Response to 45-Day Comments:

<u>Regulation Section</u>	<u>Summary of 45-Day Comments</u>	<u>Bureau Response to 45-Day Comments</u>
5416(d)	Commenters request that local governments have the authority to regulate commercial cannabis activity in their jurisdiction as provided in Business and Professions Code section 26200, including prohibiting delivery in their jurisdiction.	The Bureau agrees in part with this comment. Local jurisdictions have the authority to regulate commercial cannabis businesses operating in their jurisdiction. However, Business and Professions Code section 26090 provides that a local jurisdiction shall not prevent delivery of cannabis goods on public roads.

24 (See MJN, Exhibit C, *County of Santa Cruz et al. v. Bureau of Cannabis Control, et al*, Fresno
25 County Superior Court Case No. 19CECG01224 at its internal Exhibit C “Relevant Excerpts from
26 Bureau of Cannabis Control California Code of Regulations Title 16, Division 42 – Medicinal and
27 Adult-Use Cannabis Regulation Final Statement of Reasons” at pp. 1061.)
28

1 These comments reflect that the BCC confirmed, in response to public comments, that it was
2 not attempting to override the ability of a local jurisdiction to regulate cannabis deliveries, and
3 instead harmonizes the Section with Business and Professions Code § 26090, which states that a
4 local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a
5 licensee acting in compliance with this division and *local law as adopted under Section 26200*. (Bus.
6 & Prof. Code § 26090.)

7 It is important to note that not only the County, but the Chief of the BCC, Lori Ajax, does not
8 agree with Plaintiff's interpretation of Section 5416(d). In a May 2019 interview, Ms. Ajax
9 confirmed that local jurisdictions can be more restrictive than state law when it comes to cannabis
10 delivery, but that they would have to enforce their own regulations (the BCC would not do it for
11 them):

12 But what we're starting to see is - - you know, the San Francisco City
13 Attorney just came out with a memo saying that they are going to
14 restrict delivery just - - you have to have a license with the City of San
15 Francisco in order to deliver. And I believe they are not going to allow
16 what we call the ice cream truck or the dynamic delivery.

17 *Now, cities and counties can be more restrictive than our regulations.*
18 *So - - but they would be enforcing that on their own, the State wouldn't*
19 *be enforcing something like that. So I think it's just - - you're just*
20 *going to see a patch work of what cities and counties are doing to*
21 *licensees in their area and what they're going to require...."*

22 (Declaration of Melissa Shaw, Exh. 1 [emphasis added].)

23 There is no doubt that local jurisdictions have a right to control cannabis related activity.
24 That has been a consistent part of all legislation and statutes enacted related to cannabis. Plaintiff
25 cannot show a likelihood of success on the merits in support of its claim that Santa Cruz County
26 Code sections 7.130.050, 7.130.090, and 7.130.110 conflict with state law. Therefore, the Court
27 should deny Plaintiff's motion.

28 **B. If Section 5416(d) Did Restrict A Local Jurisdiction's Ability To Regulate Cannabis**
Deliveries, It Would Be Void, As It Would Conflict With State Law.

As explained above, Plaintiff is simply misstating Section 5416(d). However, if the Court
were to agree with Plaintiff's reading of the administrative rule, it should also find that Section
5416(d) is void on its face, because it would conflict with the very state law it cites as authority for

1 its adoption.

2 “[A]dministrative action must be within the scope of the authority conferred by the enabling
3 statute.” (*Ass’n for Retarded Citizens v. Dep’t of Developmental Servs.* (1985) 38 Cal.3d 384, 391.)

4 “Administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is
5 void.” (*Id.*) In analyzing whether administrative action is consistent with state statutes, courts look
6 first to the statutory text. (*Marshall v. McMahon* (1993) 17 Cal.App.4th 1841, 1847-48.) Courts
7 may then look to legislative history, as well as general policies underlying the legislation. (*Id.*)

8 “[A]dministrative regulations that violate acts of the Legislature are void and no protestations that
9 they are merely an exercise of administrative discretion can sanctify them. They must conform to the
10 legislative will if we are to preserve an orderly system of government.” (*Morris v. Silliams* (1967) 67
11 Cal.2d 733, 737.) Nor is the motivation of the agency relevant: “it is fundamental that an
12 administrative agency may not usurp the legislative function, no matter how altruistic its motives
13 are.” (*City of San Joaquin v. State Bd. Of Equalization* (1970) 9 Cal.App.3d 365, 374.) Here, as
14 reflected above, if Plaintiff’s reading of Section 5416(d) is correct, it would conflict with the
15 relevant statutory text and the legislative history confirming the ability of local jurisdictions to
16 regulate cannabis deliveries, and it would be void.

17 The failure of SB 1302 should not be overlooked here. If the BCC did attempt, via an
18 administrative rule, to “enact” a proposal that failed at the legislative level, it would not stand. In
19 *Cooper v. Swoap* (1974) 11 Cal.3d 856, the court was presented with determining whether a
20 particular regulation was consistent with the governing statutory scheme. The court stated in its
21 decision that “at the time the 1971 legislation was enacted a provision identical to the instant
22 regulation was proposed by the administration but was decisively rejected by the Legislature; thus,
23 the legislative history provides perhaps the clearest indication that the present regulation is
24 inconsistent with legislative intent.” (*Id.* at 859.)

25 Section 5416(d) did not do what Plaintiff says it did. But assuming for purposes of argument
26 that it did, it is void on its face and not enforceable. Accordingly, Plaintiff cannot demonstrate that it
27 has a likelihood of success on the merits of this case.

1 **VI. PLAINTIFF'S DAMAGES CAN BE QUANTIFIED MONETARILY AND THUS**
2 **PLAINTIFF CANNOT SHOW IRREPARABLE HARM**

3 The second factor this Court must consider is the interim harm Plaintiff may suffer if the
4 injunction is denied as compared to the harm that the County may suffer if the injunction is granted.
5 (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.*, 23 Cal.App.4th at
6 1471.) "Remedy by injunction is summary, peculiar, and extraordinary, and it ought not to be issued
7 except for prevention of great and irreparable injury." (*Pellissier v. Whittier Water Co.* (1922) 59
8 Cal.App.1.)

9 "[A]n irreparable injury is one for which either its pecuniary value is not susceptible to
10 monetary valuation or the item is so unique its loss deprives the possessor of intrinsic values not
11 replaceable by money or in kind." (*Jessen v. Keystone Savings & Loan Assn.* (1983) 142 Cal.App.3d
12 454; *see also Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* 23 (1994)
13 Cal.App.4th 1459, 1471 [If the plaintiff may be fully compensated by payment of damages,
14 preliminary injunction should be denied].)

15 Because Plaintiff is seeking to enjoin the County from enforcing its ordinances, Plaintiff
16 must make a significant showing of irreparable injury. (*Tahoe Keys Property Owners' Assn. v. State*
17 *Water Resources Control Bd.* 23 Cal.App.4th 1459, 1471.) Plaintiff cannot do that here. Plaintiff
18 has stated, in conclusory fashion with no material supporting documentation, that it is losing over
19 \$1,000 per day. (Declaration of Gavin Kogan at ¶¶ 15, 16.) Plaintiff has not given any actual data
20 in support of the alleged losses. This is insufficient to meet the heightened burden. "General
21 statement, without supporting details or specifications, that complainant will be subjected to great
22 expense by acts sought to be enjoined is not adequate basis for relief on ground of irreparable
23 damage." (*California v. Latimer* (1938) 305 U.S. 255.)

24 Moreover, if Plaintiff prevails on the merits, which the County believes is highly unlikely,
25 the alleged damages are monetary in nature. (Kogan Decl. at ¶ 15, 16.) Plaintiff presents no
26 evidence to suggest that it cannot be fully compensated by payment of those damages.

27 While it is clear that Plaintiff's alleged damages can be remedied in monetary damages, the
28 Court must also consider the potential harm to the County defendants if a preliminary injunction is

1 granted. Plaintiff seeks to enjoin public officers and agencies in the performance of their duties;
2 thus, public policy considerations and the public interest must be considered. (*Loma Portal Civic*
3 *Club v. American Airlines, Inc.* (1964) 61 Cal.2d 582, 588.) Here, SCCC 7.130 was created with
4 specific health and safety policies in mind, which were outlined in detail above. (See SCCC §
5 7.130.010 and LoForti Declaration.) Granting the requested relief would deter or delay the County
6 defendants in the performance of their duties and would entail a significant risk of harm to the public
7 interest. (See LoForti Decl. at ¶¶ 7-12.) If the injunction is granted, out-of-County retailers will
8 begin delivering in the County immediately, and the County will have no ability to enforce its
9 regulations on these businesses. In addition, the injunction will be contrary to the County's strategic
10 plan. (Id.) If the County eventually prevails on the merits, it will have a considerable uphill battle to
11 wage in re-enforcing its ordinances and re-establishing its regulatory system. The potential harm
12 this may create to the community from essentially de-regulating cannabis delivery at the local level
13 simply cannot be quantified in monetary damages.

14 It is clear that there is little risk of irreparable harm to Plaintiff if provisional relief is denied,
15 but significant risk of harm to the County defendants if such relief is granted. Accordingly, the
16 Court should deny Plaintiff's request for a preliminary injunction.

17 VII. CONCLUSION

18 Plaintiff has failed to present sufficient evidence that this Court should take the extraordinary
19 action of issuing an injunction prohibiting the County of Santa Cruz from enforcing the cannabis
20 delivery restrictions in the Santa Cruz County Code. For the reasons stated above, the County Code
21 does not conflict with state law. In fact, it is closely aligned with the legislative intent of cannabis
22 regulation and is supported by case law and state statutes. Thus, Plaintiff will not succeed on the
23 merits of this case.

24 Moreover, the balance of harms does not favor Plaintiff. Plaintiff's asserted damages are
25 clearly monetary in nature and are assertedly quantifiable. Thus, Plaintiff cannot show "irreparable"
26 harm. On the contrary, the harm to the County if an injunction being granted is not quantifiable, nor
27 is it compensable.

1 In light of the above, the County respectfully requests that this Court deny Plaintiff's request
2 for a preliminary injunction.

3
4 Dated: September 5, 2019

DANA McRAE, COUNTY COUNSEL

5
6 By: 

MELISSA SHAW

Assistant County Counsel

Attorneys for Defendants and Respondents

8 COUNTY OF SANTA CRUZ; COUNTY OF SANTA CRUZ
9 ADMINISTRATIVE OFFICE; COUNTY OF SANTA CRUZ
10 CANNABIS LICENSING OFFICE; and SAMUEL
11 LOFORTI, CANNABIS LICENSING MANAGER,
12 IN HIS OFFICIAL CAPACITY
13 Collectively referred to as ("COUNTY")
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1 **PROOF OF SERVICE**

2 I, the undersigned, state that I am a citizen of the United States and employed in the County
3 of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action.
4 My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set
5 out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

6
7 ☐ by **service by mail** by placing said copy enclosed in a sealed envelope and depositing the sealed
8 envelope with the United States Postal Service with the postage fully prepaid.

9 ☐ by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope
10 for collection and mailing on the date and at the place shown below following our ordinary business
11 practices. I am readily familiar with this business's practice for collecting and processing
correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service with
postage fully prepaid.

12 ☒ by **service by FedEx** by placing said copy enclosed in a sealed envelope and placing the envelope
13 for collection and overnight delivery on the date and at the place shown below.

14 ☐ by **facsimile service** at the number listed below and have confirmation that it was received by:

15 David S. Rosenbaum, Esq.
16 Jennifer A. Emmaneel, Esq.
17 McDowell•Cotter, A.P.C
2070 Pioneer Court
18 San Mateo, CA 94403
(Attorneys for Plaintiff and Petitioner
EAST OF EDEN CANNABIS CO.)

David M. Axelrad
Allison W. Meredith
Andrea L. Russi
Horvitz & Levy LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505
(Attorneys for Plaintiff and Petitioner
EAST OF EDEN CANNABIS CO.)

20
21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed on September 5, 2019 at Santa Cruz, California.

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NESSA WRIGHT

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EXHIBIT 38

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2 MELISSA C. SHAW, State Bar No. 232775
Assistant County Counsel
3 701 Ocean Street, Room 505
Santa Cruz, California 95060
4 Telephone: (831) 454-2040
Fax: (831) 454-2115

FILED
SEP 18 2019

ALEX CALVO, CLERK
~~BY DECLAN SALCEDO~~
DEPUTY, SANTA CRUZ COUNTY

5 Attorneys for Defendants
6 COUNTY OF SANTA CRUZ; COUNTY OF SANTA CRUZ
ADMINISTRATIVE OFFICE; COUNTY OF SANTA CRUZ
7 CANNABIS LICENSING OFFICE; and SAMUEL
LOFORTI, CANNABIS LICENSING MANAGER,
8 IN HIS OFFICIAL CAPACITY
Collectively referred to as ("COUNTY")

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SANTA CRUZ

12 EAST OF EDEN CANNABIS CO.,

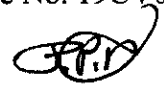
13 Plaintiff and Petitioner,

14 v.

15
16 SANTA CRUZ COUNTY; SANTA CRUZ
17 COUNTY ADMINISTRATIVE OFFICE;
18 SANTA CRUZ COUNTY CANNABIS
19 LICENSING OFFICE; SAMUEL LOFORI,
CANNABIS LICENSING MANAGER, IN HIS
OFFICE, IN HIS OFFICIAL CAPACITY;
DOES 1-10,

20 Defendants and Respondents.

Case No. 19CV02072


**[PROPOSED] ORDER DENYING
PLAINTIFF AND PETITIONER'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: September 18, 2019
Time: 8:30 a.m.
Dept.: 5

21
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 The Motion for Preliminary Injunction brought by Plaintiff and Petitioner East of Eden
24 came on regularly for hearing on September 18, 2019 at or about 8:30 a.m. in Department 5 of the
25 above entitled Court.

26 Counsel for both parties appeared at the regularly noticed hearing and oral argument was
27 heard. Having reviewed and considered the Motion, the pleadings, declarations and exhibits in
28

1 support thereof, and after taking oral argument from all parties thereon, and finding good cause
2 therefore, the Court rules and orders as follows:

3 **I. MOTION FOR PRELIMINARY INJUNCTION**

4 The Court's broad discretion in ruling on an application for a preliminary injunction must
5 be exercised in light of (1) a reasonable probability of success on the merits; and (2) who will
6 suffer greater injury? (Weil & Brown, Civ. Pro. Before Trial § 9:506 (TRG 2019)). The burden of
7 proof is on the moving party to show all elements necessary to support the issuance of a
8 preliminary injunction. (Weil & Brown supra at 9:632.1.) "It frequently is observed that a
9 preliminary injunction is an extraordinary and drastic remedy, one that should not be granted
10 unless the movant, by a clear showing, carries the burden of persuasion." (*Mazurek v. Armstrong*
11 (1997) 520 U.S. 968, 972).

12 Examining the first of these elements, whether Plaintiff has a reasonable probability of
13 success on the merits, Plaintiff argues that Santa Cruz County Code sections 7.130.050, 7.130.090
14 and 7.130.110 conflict with 16 CCR § 5416(d) and are thus preempted, void, and unconstitutional.
15 (Motion at 7:13-15.)

16 However, CA Business and Professions Code § 26200 entitled Local Regulation not
17 Superseded, provides (a)(1) This division shall not be interpreted to supersede or limit the
18 authority of *a local jurisdiction to adopt and enforce local ordinances* to regulate businesses
19 licensed under this division...

20 Cal. Bus. & Prof. Code § 26090, Delivery by Licensees, provides:

21 (e) A local jurisdiction shall not prevent delivery of cannabis or cannabis products on
22 public roads *by a licensee acting in compliance with this division and local law* as adopted under
23 Section 26200.

24 With respect to delivery, the Santa Cruz County Code does not completely ban delivery of
25 cannabis, rather, it requires that any business delivering cannabis in unincorporated Santa Cruz
26 County have a local license. (SCCC §§ 7.130.050(C), 7.130.110(F)(1).)

27 In addition, the California appellate courts have confirmed that cannabis operations are
28 absolutely subject to municipal regulation. "The County [has the] constitutional authority to

1 regulate the particular manner and location in which a business may operate.” (*County of Los*
2 *Angeles v. Hill* (2011) 192 Cal.App.4th 861, 869).

3 The above statutes make clear that local control has been preserved by the State statutory
4 scheme and that Santa Cruz County’s ordinances do not conflict with California state law, are not
5 preempted, nor are they unconstitutional. Therefore, Plaintiff has failed in its burden of making a
6 clear showing of a reasonable probability of success on the merits. (*Maxurek v. Armstrong* (1997)
7 520 U.S. 968, 972.)

8 The irreparable harm claimed by Plaintiffs if an injunction is not granted is the loss of
9 \$1,000.00/day. (Dec. G.Kogan ¶ 15).

10 However, “an irreparable injury is one for which either (1) its pecuniary value is not
11 susceptible to monetary valuation, or (2) the item is so unique its loss deprives the possessor of
12 intrinsic values not replaceable by money or in kind.” (*Jessen v. Keystone Sav. & Loan Ass’n*,
13 (1983) 142 Cal.App.3d 454, 457)

14 Because Plaintiff’s injury is susceptible to monetary valuation it does not qualify as an
15 irreparable injury.

16 Moreover, even taking into consideration the other claimed irreparable injury (injury to
17 reputation, etc.), Defendants are more likely to suffer greater injury if the injunction is granted than
18 the injury to Plaintiff if the injunction is denied in that out-of-County retailers will begin delivering
19 in the County immediately, and the County will have no ability to enforce its regulations on these
20 businesses. (LoForti Dec. ¶ 7.)

21 For the foregoing reasons, the request for a preliminary injunction is denied.

22 **County’s Request for Judicial Notice**

- 23 1. “Senate Committee on Governance and Finance, Senator Mike McGuire, Chair,
24 Cannabis: Local Jurisdiction: Prohibitions on Delivery, Analysis of Sen. Bill No. 1302
25 (2017-2018 Reg. Sess.): Granted.
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3 **II. PLAINTIFF'S MOTION FOR JUDICIAL NOTICE**

4 A. The Bureau of Cannabis Control's (BCC Initial Statement of Reasons for its proposed
5 regulations under the Medicinal and Adult-Use Cannabis Regulation and Safety Act
6 (MAUCRSA): Granted.


7 B. The Office of Administrative Law's Notice of Approval of Certificate of Compliance for
8 the BCC's implementation of permanent regulations under MAUCRSA, signed on January
9 16, 2019: Granted.

10 C. The complaint filed in *County of Santa Cruz v. Bureau of Cannabis Control* in the Superior
11 Court for the County of Fresno, Case No. 19CECG01224: Granted.

12 D. The docket sheet for *County of Santa Cruz v. Bureau of Cannabis Control* in the Superior
13 Court for the County of Fresno, Case No. 19CECG01224: Granted.

14
15 **IT IS SO ORDERED.**

16
17 DATED: 9/18/19, 2019


HON. PAUL BURDICK
JUDGE OF THE SUPERIOR COURT

1 **PROOF OF SERVICE**

2 I, the undersigned, state that I am a citizen of the United States and employed in the County
3 of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action.
4 My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set
5 out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

6 **[PROPOSED] ORDER DENYING PLAINTIFF AND PETITIONER'S MOTION FOR**
7 **PRELIMINARY INJUNCTION**

8 ☐ by **service by mail** by placing said copy enclosed in a sealed envelope and depositing the sealed
9 envelope with the United States Postal Service with the postage fully prepaid.

10 ☒ by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope
11 for collection and mailing on the date and at the place shown below following our ordinary business
12 practices. I am readily familiar with this business's practice for collecting and processing
correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service with
postage fully prepaid.

13 ☐ by **facsimile service** at the number listed below and have confirmation that it was received by:

14 David S. Rosenbaum, Esq.
15 Jennifer A. Emmaneel, Esq.
16 McDowell♦Cotter, A.P.C
2070 Pioneer Court
17 San Mateo, CA 94403
(Attorneys for Plaintiff and Petitioner
18 EAST OF EDEN CANNABIS CO.)

David M. Axelrad
Allison W. Meredith
Andrea L. Russi
Horvitz & Levy LLP
3601 West Olive Avenue, 8th Floor
Burbank, CA 91505
(Attorneys for Plaintiff and Petitioner
EAST OF EDEN CANNABIS CO.)

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct. Executed on September 18, 2019 at Santa Cruz, California.
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MELISSA SHAW
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EXHIBIT 39

1 XAVIER BECERRA
Attorney General of California
2 HARINDER K. KAPUR
Senior Assistant Attorney General
3 State Bar Number: 198769
STACEY L. ROBERTS
4 Supervising Deputy Attorney General
State Bar Number: 237998
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6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 738-9407
Fax: (619) 645-2061
8 E-mail: Harinder.Kapur@doj.ca.gov
Attorneys for [Proposed]
9 *Real Party in Interest/Intervenor*
Bureau of Cannabis Control

*Exempt from filing fees
pursuant to Gov. Code, §6103*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CRUZ

15 **EAST OF EDEN CANNABIS CO.,**

16 Plaintiff and Petitioner,

17 v.

18
19 **SANTA CRUZ COUNTY; SANTA CRUZ**
COUNTY ADMINISTRATIVE OFFICE;
20 **SANTA CRUZ COUNTY CANNABIS**
LICENSING OFFICE; SAMUEL
21 **LOFORTI, CANNABIS LICENSING**
MANAGER, IN HIS OFFICIAL
22 **CAPACITY; DOES 1-10,**

23 Defendants and Respondents.

Case No. 19CV02072

**THE BUREAU OF CANNABIS
CONTROL'S NOTICE OF MOTION
AND MOTION FOR LEAVE TO
INTERVENE PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 387**

Date: January 2, 2020
Time: 8:30 a.m.
Dept: 5
Judge: The Honorable Paul Burdick
Trial Date: TBD
Action Filed: July 12, 2019

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on January 2, 2020 at 8:30 a.m. in Department 5 of the Santa
3 Cruz County Superior Court, located at 701 Oceans Street, Santa Cruz, California, 95060, the
4 [Proposed] Real Party in Interest/Intervenor Bureau of Cannabis Control (Bureau) will and
5 hereby does move the Court for an order granting the Bureau's motion for leave to intervene,
6 pursuant to Code of Civil Procedure section 387.

7 This motion is based upon this Notice and Motion, the Memorandum of Points and
8 Authorities, the Request for Judicial Notice, and the [Proposed] Complaint for Injunctive and
9 Declaratory Relief in Intervention of Real Party in Interest/Intervenor the Bureau of Cannabis
10 Control, all served and filed therewith, any matters of which the Court may take judicial notice,
11 the papers and records on file with the Court in this matter, and oral argument at the hearing on
12 the motion.

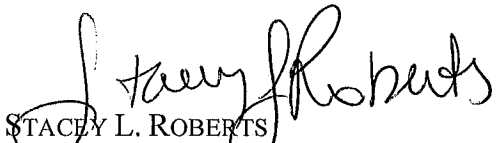
13 Pursuant to Local Rule 2.9, tentative rulings in civil law and motion matters are posted in
14 accordance with the California Rules of Court, rule 3.1308 and require notice of intent to appear.
15 Tentative rulings are not required, but any Judicial Officer who does issue tentative rulings will
16 prepare and publish a tentative ruling by 3:00 p.m. on the day before the scheduled hearing.
17 Tentative rulings will be made available after 3:00 p.m. on the court day before the scheduled
18 hearing via the Court's website at www.santacruzcourt.org . If a party does not have access to the
19 internet during the time period when tentative rulings are posted, a party may call (831) 420-2300
20 (Champers) for assistance in obtaining the tentative ruling.

21 If the Court has not directed argument in the tentative ruling, oral argument is permitted
22 only if a party intending to appear notifies all other parties by telephone or in person by 4:00 p.m.
23 on the Court day before the hearing of the party's intention to appear. Notice may consist of a
24 phone call or email to all other parties that argument is being requested (i.e., it is not necessary to
25 speak with counsel or parties directly). A party also must notify the Court by telephone of the
26 party's intention to appear by calling (831) 420-2483 by 4:00 p.m. on the Court day before the
27 hearing. The tentative ruling will become the ruling of the Court if the Court has not directed oral
28 argument by its tentative ruling and notice of intent to appear has not been given.

1 Dated: November 18, 2019

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 HARINDER K. KAPUR
5 Senior Assistant Attorney General

6 
7 STACEY L. ROBERTS
8 Supervising Deputy Attorney General
9 Attorneys for [Proposed] Real Party in
10 Interest/Intervenor
11 Bureau of Cannabis Control
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Pursuant to Code of Civil Procedure section 387, the Bureau of Cannabis Control (Bureau)
4 seeks intervention as a real party in interest in this lawsuit involving the interpretation of the
5 Bureau's regulation, California Code of Regulations, title 16, section 5416, subdivision (d)
6 (Cannabis Delivery Regulation). The Bureau promulgated the Cannabis Delivery Regulation to
7 implement certain provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety
8 Act (MAUCRSA) related to the delivery of commercial cannabis in the State of California. (Bus.
9 & Prof. Code, § 26000 et seq.)

10 In this matter, East of Eden Cannabis Co. (Petitioner) brought suit against Santa Cruz
11 County, Santa Cruz Administrative Office, Santa Cruz County Cannabis Licensing Office, and
12 Samuel LoForti, Cannabis Licensing Manager, in his official capacity (Respondents) challenging
13 Santa Cruz County Code sections 7.130.050, subdivisions (A) & (C), 7.130.090, and 7.130.110
14 (A) & (F) (County Cannabis Codes). (Request for Judicial Notice (RJN), Exhibit 1, Petition for
15 Writ of Mandate and Verified Complaint for Declaratory and Injunctive Relief, pp. 1-2, ¶ 1.)
16 Specifically, Petitioner alleges that the County Cannabis Codes violate provisions of MAUCRSA
17 and the Cannabis Delivery Regulation. (*Ibid.*) Because interpretation of the Cannabis Delivery
18 Regulation is the main legal issue in this case, this Court should permit the Bureau to intervene as
19 a real party in interest under Code of Civil Procedure section 387. The Bureau has a strong
20 interest in ensuring the accurate and uniform interpretation, application, and enforcement of its
21 regulation, and deference should be given to the Bureau, as the promulgating agency, about the
22 meaning of the Cannabis Delivery Regulation. Further, this case is in its infancy, and no trial
23 date has been set yet. The Bureau's intervention will not delay this case. Accordingly, the
24 Bureau's motion should be granted.

25 **PROCEDURAL BACKGROUND**

26 On July 12, 2019, Petitioner filed a Petition for Writ of Mandate and Verified Complaint
27 for Declaratory and Injunctive Relief (Petition) against Respondents. (RJN, Exhibit 1.) The
28 Petition challenges the Respondents' decision prohibiting Petitioner from delivering cannabis and

1 cannabis products to unincorporated Santa Cruz County in an alleged violation of state law.
2 (*Ibid.*) On July 16, 2019, Petitioner filed a Motion for Preliminary Injunction seeking to enjoin
3 Respondents from enforcing County Cannabis Codes prohibiting cannabis delivers to locations
4 within unincorporated Santa Cruz County by commercial cannabis retailers licensed by and
5 located in other jurisdictions outside of Santa Cruz County.

6 Thereafter, Respondents filed an Answer, making specific admissions, general denials, and
7 stating affirmative defenses. On September 5, 2019, Respondents filed an Opposition to
8 Petitioner's Motion for Preliminary Injunction.

9 On September 18, 2019, this Court denied Petitioner's preliminary injunction motion.
10 Further, the Court set trial calendar call on February 13, 2020.

11 **THE BUREAU SHOULD BE PERMITTED TO INTERVENE**
12 **AS A REAL PARTY IN INTEREST**

13 The Court should grant this motion because the Bureau is a real party in interest in that this
14 writ of mandate proceeding directly impacts the Bureau's interest in the interpretation,
15 application, and enforcement of its Cannabis Delivery Regulation. A real party in interest is
16 generally defined as "any person or entity whose interest will be directly affected by the
17 proceeding." (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169; *Sonoma County Nuclear*
18 *Free Zone '86 v. Super. Ct.* (1987) 189 Cal. App. 3d 167, 173.) The real party in interest may be
19 "anyone having a direct interest in the result." (*Sonoma County Nuclear Free Zone '86 v. Super.*
20 *Ct., supra*, 189 Cal. App. 3d 167, 173; see also Cal. Administrative Mandamus (Cont.Ed.Bar 3d
21 ed. 2019) §§ 8.15-8.17 [discussing motion to intervene under Code of Civil Procedure section 387
22 for failure to name real party in interest].) Further, the purpose of intervention "is to promote
23 fairness by involving all parties potentially affected by the judgment to participate in the
24 litigation." (*Lincoln Nat'l Life Ins. Co. v. State Bd. of Equalization* (1994) 30 Cal.App. 4th 1411,
25 1423.) The Bureau is a real party in interest because the Court's ultimate decision regarding the
26 meaning of the Bureau's Cannabis Delivery Regulation will directly impact how the BCC carries
27 out its statutory obligations under MAUCRSA and MAUCRSA's implementing regulations.
28 (*County of San Bernardino, et al. v. Harsh Cal. Corporation* (1959) 52 Cal.2d 341, 345 [United

1 States entitled to intervene where case involved the interest of the United States in sustaining its
2 fiscal policy through adjudication of validity and correct interpretation of its statute].) For the
3 reasons set forth below, the Bureau's intervention as a real part in interests meets the standards of
4 Code of Civil Procedure 387, subdivisions (a) and (b) and promotes fairness by including all
5 parties potentially impacted by any decision in this case.

6 **I. THE BUREAU SHOULD BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT AND**
7 **THIS MOTION TO INTERVENE IS TIMELY**

8 The Court should grant the Bureau's motion to intervene because it has a right to intervene
9 in this suit and this case is just commencing. Under Code of Civil Procedure section 387,
10 subdivision (d)(1)(A), the court shall permit a nonparty to intervene if the application to intervene
11 is timely and a "provision of law confers an unconditional right to intervene."

12 **A. The Bureau has a right to intervene**

13 The Bureau has a right to intervene as a real party in interest in this case because it has a
14 direct interest in ensuring proper interpretation of the regulations it has promulgated and for
15 which it is authorized to oversee and ensure compliance. The Bureau is a bureau under the
16 umbrella of the Business, Consumer Services, and Housing Agency, and exists within the
17 Department of Consumer Affairs. (Bus. & Prof. Code, § 26010.) The Bureau is tasked with
18 "ensuring that those private businesses and professions deemed to engage in activities which have
19 potential impact upon the public health, safety, and welfare are adequately regulated in order to
20 protect the people of California. . ." (Bus. & Prof. Code, §101.6.) The Bureau was established to
21 administer and enforce the provisions of MAUCRSA related to the Bureau's statutory role. (Bus.
22 & Prof. Code, §§ 26000, 26010.) The Bureau was granted sole authority to issue, deny, and
23 otherwise administer state licenses for the commercial retail sale of cannabis. (Bus. & Prof.
24 Code, § 26012, subd. (a)(1).) To that end, as a licensing authority, the Bureau was granted
25 responsibility to "make and prescribe reasonable rules and regulations as may be necessary to
26 implement, administer, and enforce their respective duties relating to the administration of state
27 licenses for the commercial cannabis activities, include the commercial retail sale of cannabis."
28 (Bus. & Prof. Code, § 26013, subd. (a).) The resulting permanent regulations adopted by the

1 Bureau include a comprehensive statewide regulatory scheme for retail sales of cannabis
2 conducted by delivery. (See Cal. Code Regs., tit. 16, §§ 5414-5421.)

3 The delivery regulations adopted by the Bureau implement sections 26070 and 26090 of the
4 Business and Professions Code. Business and Professions Code section 26070 sets forth certain
5 requirements for the transportation of cannabis, authorizes the Bureau to establish licenses and
6 requirements for the delivery of cannabis and cannabis products, and permits retailers to conduct
7 sales exclusively by delivery without a retail storefront. (Bus. & Prof. Code, § 26070, subd.
8 (a)(2).) The Bureau delivery regulations include requirements for who may be a delivery driver
9 (Cal. Code Regs., tit. 16, § 5415), safety and monitoring requirements for the delivery vehicle
10 (*ibid.*, § 5417), and limitations on the dollar value of cannabis inventory that may be carried at
11 one time (§ 5417; § 5418).

12 The Bureau moves to intervene in this matter in order to provide this court with the
13 complete background and understanding of MAUCRSA and its implementing regulations, and
14 specifically here, the Cannabis Delivery Regulation, which authorizes a licensed commercial
15 cannabis retail business to deliver cannabis and cannabis products throughout the state, so long as
16 they are in compliance with MAUCRSA. The Bureau's familiarity with its commercial cannabis
17 program and expertise regarding the details and history of MAUCRSA and the Cannabis Delivery
18 Regulation will assist this Court in ruling on this case. Further, the Bureau should have a voice
19 on the meaning of a regulation it promulgated because the Court's decision regarding the
20 interpretation of the Cannabis Delivery Regulation will have a direct effect on the Bureau's
21 statutory obligations as the regulator over the retail commercial cannabis industry. (*County of*
22 *San Bernardino, et al. v. Harsh Cal. Corporation, supra*, 52 Cal.2d 341, 345.)

23 This case may also lead to or impact additional litigation involving the Bureau, including
24 inconsistent state court rulings about the meaning of the Cannabis Delivery Regulation.¹ If the

25 ¹ Defendant Santa Cruz County is currently a plaintiff, along with 24 California cities, in a
26 lawsuit against the Bureau and Bureau Chief Lori Ajax, seeking to declare the Cannabis Delivery
27 Regulation invalid. (RJN, Exhibit 2, Complaint for Declaratory and Injunctive Relief, *County of*
28 *Santa Cruz et al. v. Bureau of Cannabis Control, et al.*, Fresno County Superior Court, No.
19CECG01224.) There is no certainty that the Fresno County matter will reach a conclusion first,
so the BCC has in interest in participating in the present case to ensure that its interests are
protected.

1 Bureau's motion for intervention is denied, then this would increase the risk that the Court might
2 issue a decision which serves to enjoin one of the state's duly-enacted regulations, which would
3 be a substantial harm to the state. (*See Maryland v. King* (2012) 567 U.S. 1301 ["Any time a State
4 is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers
5 a form of irreparable injury" (citing *New Motor Vehicle Bd. Of Cal. V. Orrin W. Fox Co.*, 434
6 U.S. 1345.)).) For all of these significant reasons, intervention must be allowed.

7 **B. Intervention is timely**

8 The Bureau's motion for leave to intervene is timely as this case is in the early phase of
9 litigation, and the parties will not be prejudiced by the Bureau's intervention at this stage of the
10 proceedings. Section 387 does not place a statutory time limit on motions to intervene. (*Noya v.*
11 *A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842.) However, "it is the general rule that a
12 right to intervene should be asserted within a reasonable time and that the intervener must not be
13 guilty of an unreasonable delay after knowledge of the suit." (*Allen v. California Water & Tel.*
14 *Co.* (1947) 31 Cal.2d 104, 108 [complaint in intervention untimely where filed 11 years after the
15 commencement of the action, and several years after the trial.]

16 Petitioner filed this lawsuit approximately four months ago. The only hearing held in this
17 case has been Petitioner's motion for preliminary injunction, heard on September 18, 2019. No
18 trial date has been set. Because this case is in the beginning stage of litigation, the Bureau's
19 intervention is timely.

20 **II. THE BUREAU HAS AN INTEREST FOR WHICH THE COURT MAY PERMIT**
21 **INTERVENTION**

22 Even if the Bureau did not have a right to intervene in this action (it does), the Court should
23 nonetheless grant the Bureau's motion to intervene because this motion is timely, as established
24 above, and it meets the criteria under the Code of Civil Procedure section 387 subdivision (d)(2)
25 for permissive intervention. Code of Civil Procedure section 387, subdivision (d)(2) provides that
26 "[t]he court may, upon timely application, permit a nonparty to intervene in the action or
27 proceeding if the person has an interest in the matter in litigation, or in the success of either of the
28 parties, or an interest against both." (*See also Siena Court Homeowners Ass'n v. Green Valley*

1 Corp. (2008)164 Cal. App. 4th 1416, 1427-28.).) The courts have determined that a party may
2 obtain permissive intervention by filing a timely application and meeting three other conditions:
3 (1) it has a direct interest in the lawsuit; (2) intervention will not enlarge the issues raised by the
4 original parties; and (3) its reasons for participating are not outweighed by the rights of the
5 original parties to conduct their lawsuit. (*People ex rel. Rominger v. County of Trinity* (1983) 147
6 Cal.App.3d 655, 660-61.)

7 Further, Code of Civil Procedure section 387, subdivision (d)(2) should be construed
8 liberally as the Court has discretion to allow a non-party to intervene in pending litigation when
9 the non-party has a direct and immediate interest in the litigation. (*Cal. Assn. of Professional*
10 *Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 379-80; *see also Simpson Redwood*
11 *Co. v. State of Cal.* (1987) 196 Cal.App.3d 1192, 1200 [citing *Mary R. v. B. & R. Corp.* (1983)
12 149 Cal.App.3d 308, 315.)

13 Even if the Court does not agree that the Bureau has the right to intervene as a real party in
14 interest, then permissive intervention is appropriate in this case. As articulated above, the Bureau
15 has a direct interest in this lawsuit because the case hinges on the interpretation of the Bureau's
16 own regulation. As the entity responsible for regulating the retail commercial sale of cannabis
17 and cannabis products throughout the state, any final judgment related to the validity of the
18 Bureau's statutes and regulations will have a practical and possibly even a legal effect on how the
19 Bureau regulates the availability of legal cannabis and cannabis products in California.

20 Also, the Bureau's intervention will not enlarge the issues because it seeks to intervene for
21 the limited purpose of offering evidence on the meaning and purpose of, and history behind, the
22 Cannabis Delivery Regulation, as well as ensuring that the Bureau fully carries out its' statutory
23 charge as the state's regulator over retail sales of cannabis conducted by delivery.

24 Finally, the Bureau's authority to regulate commercial cannabis activity throughout the
25 state outweighs any opposition that could be offered by either party in this case. As such, the
26 Bureau respectfully requests the Court to permit intervention because the Bureau's expertise
27 regarding the Cannabis Delivery Regulation will aid the Court's efforts to reach a fully-informed
28 decision regarding the validity of the Bureau's the regulation.


1 **CONCLUSION**

2 For the foregoing reasons, the Bureau of Cannabis Control requests that the Court grant this
3 motion for leave to intervene.

4 Dated: November 18, 2019

Respectfully Submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 HARINDER K. KAPUR
8 Senior Assistant Attorney General

9 
10 STACEY L. ROBERTS
11 Supervising Deputy Attorney General
12 Attorneys for [Proposed] Real Party in
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14 Bureau of Cannabis Control

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *East of Eden Cannabis Co. v. Santa Cruz County, et al.*
No.: **19CV02072**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 18, 2019, I served the attached **THE BUREAU OF CANNABIS CONTROL'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 387** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 2550 Mariposa Mall, Room 5090, Fresno, CA 93721, addressed as follows:

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*Attorneys Representing
Defendants/Respondents*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 18, 2019, at Fresno, California.

Carol Borunda
Declarant


Signature

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EXHIBIT 40

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County of Santa Cruz
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CRUZ

12
13 **CALIFORNIA BUREAU OF CANNABIS
14 CONTROL**

15 Real Party in Interest/Intervenor/Plaintiff,

16 v.

17 **SANTA CRUZ COUNTY; SANTA CRUZ
18 COUNTY ADMINISTRATIVE OFFICE;
SANTA CRUZ COUNTY CANNABIS
19 LICENSING OFFICE; SAMUEL
LOFORTI, CANNABIS LICENSING
20 MANAGER, IN HIS OFFICIAL
CAPACITY; DOES 1-10,**

21 Defendants and
22 Respondents.

Case No. 19CV02072

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF IN
INTERVENTION OF REAL PARTY IN
INTEREST/INTERVENOR/PLAINTIFF
THE CALIFORNIA BUREAU OF
CANNABIS CONTROL**

23
24
25 By leave of court, Real Party in Interest/Intervenor/Plaintiff the California Bureau of
26 Cannabis Control alleges:

27 ///

28 ///

INTRODUCTION

1. The California Bureau of Cannabis Control (Bureau) intervenes as a real party in interest in this lawsuit involving a challenge to the validity of its regulation, California Code of Regulations, title 16, section 5416, subdivision (d) (Cannabis Delivery Regulation). The Bureau implemented the Cannabis Delivery Regulation pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, § 26000 et seq.) The Cannabis Delivery Regulation provides that “A delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division.” (Cal. Code Regs., tit. 16, § 5416, subd. (d).)

2. The Bureau seeks a judicial declaration validating the Cannabis Delivery Regulation. The Court should permanently enjoin Santa Cruz County, Santa Cruz Administrative Office, Santa Cruz County Cannabis Licensing Office, and Samuel LoForti, Cannabis Licensing Manager, in his official capacity (Respondents) from enforcing local laws that violate the Cannabis Delivery Regulation.

GROUND FOR INTERVENTION

3. East of Eden Cannabis Co. (Petitioner), a commercial cannabis retailer licensed by the Bureau and permitted by the City of Salinas, filed a Petition for Writ of Mandate and Verified Complaint for Declaratory and Injunctive Relief (Petition) against Respondents challenging Santa Cruz County Code sections 7.130.050, subdivisions (A) & (C), 7.130.090, and 7.130.110 (A) & (F) (County Cannabis Codes). Petitioner alleges that the County Cannabis Codes violate provisions of MAUCRSA and the Cannabis Delivery Regulation because the County Cannabis Codes prohibit commercial cannabis retailers licensed by the Bureau and other local jurisdictions from delivering cannabis in unincorporated areas of Santa Cruz County, and only commercial cannabis retailers licensed by Santa Cruz County are authorized to deliver in unincorporated Santa Cruz County.

4. Petitioner did not name the Bureau as a real party in interest in the Petition.

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1 5. In their answer, Respondents characterize Petitioner's allegations that the County
2 Cannabis Codes violate MAUCRSA and the Cannabis Delivery Regulation as conclusions of law,
3 and deny these allegations.

4 6. Pursuant to Code of Civil Procedure section 387, subdivision (a), the Bureau
5 intervenes as a real party in interest as a matter of right in this lawsuit to defend the validity of its
6 Cannabis Delivery Regulation.

7 7. The Bureau is a bureau within the Department of Consumer Affairs. (Bus. & Prof.
8 Code, § 26010.) The Bureau is tasked with "ensuring that those private businesses and
9 professions deemed to engage in activities which have potential impact upon the public health,
10 safety, and welfare are adequately regulated in order to protect the people of California." (Bus. &
11 Prof. Code, §101.6.) The Bureau was established to administer and enforce the provisions of
12 MAUCRSA related to the Bureau's statutory role. (Bus. & Prof. Code, §§ 26000, 26010.) The
13 Bureau was granted sole authority to issue, deny, and otherwise administer state licenses for the
14 commercial retail sale of cannabis. (Bus. & Prof. Code, § 26012, subd. (a)(1).) As a licensing
15 authority, the Bureau was granted responsibility to "make and prescribe reasonable rules and
16 regulations as may be necessary to implement, administer, and enforce" its duties relating to the
17 administration of state licenses for commercial cannabis activities, including the commercial
18 retail sale of cannabis. (Bus. & Prof. Code, § 26013, subd. (a).) The permanent regulations
19 adopted by the Bureau include a comprehensive statewide regulatory scheme for retail sales of
20 cannabis conducted by delivery. (See Cal. Code Regs., tit. 16, §§ 5414-5421.)

21 8. The Bureau promulgated the Cannabis Delivery Regulation to implement certain
22 provisions of MAUCRSA related to the delivery of cannabis in the State of California. (Bus. &
23 Prof. Code, § 26000 et seq.) The Bureau has a direct interest in the interpretation, application,
24 and enforcement of the Cannabis Delivery Regulation sufficient to intervene in this action. (*Ibid*;
25 Code Civ. Proc., § 387, subd. (a).)

26 9. Adjudication of the Bureau's interests will not delay or unduly expand the trial of this
27 action. Intervention is timely in that this case is in the early stages of litigation. No trial date has
28 been set yet in this matter. Instead, the Bureau's involvement will assist the Court by properly

1 framing the disputed legal issues in the context of California's commercial cannabis laws and
2 demonstrating why the Cannabis Delivery Regulation is critical to the state's commercial
3 cannabis market and valid.

4 10. Alternatively, for the reasons stated above, the Bureau intervenes under the Code of
5 Civil Procedure section 387, subdivision (b), which gives the court authority to "permit a
6 nonparty to intervene in the action or proceeding if the person has an interest in the matter in
7 litigation, or in the success of either of the parties, or an interest against both." (Code Civ. Proc.,
8 § 387, subd. (b).)

9 **GENERAL ALLEGATIONS**

10 **I. SUMMARY OF CALIFORNIA'S CANNABIS LAWS**

11 11. On November 5, 1996, California's voters passed Proposition 215, the
12 Compassionate Use Act (CUA), which exempted certain patients and their primary caregivers
13 from criminal liability under state law for the possession and cultivation of cannabis for medicinal
14 use. (Health & Saf. Code, § 11362.510.)

15 12. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMPA),
16 became law. (Health & Saf. Code, §§ 11362.7-11362.85.) The MMPA implemented the CUA by
17 requiring, among other things, the California Department of Public Health to establish and
18 maintain a program for the voluntary registration of qualified medicinal cannabis patients and
19 their primary caregivers through a statewide identification card system. (Health & Saf. Code, §§
20 11362.71, subd. (e), 11362.78.)

21 13. On October 11, 2015, the Legislature adopted the Medical Marijuana Regulation and
22 Safety Act (MMRSA), which established a state regulatory framework and licensing system for
23 the cultivation, manufacturing, sale, and delivery of medical cannabis in California. (Bus. & Prof.
24 Code, §§ 19300-19360.) MMRSA later became the Medical Cannabis Regulation and Safety
25 Act.

26 14. On November 8, 2016, California's voters approved Proposition 64, the Control,
27 Regulate and Tax Adult Use of Marijuana Act (AUMA), legalizing the recreational use of
28 cannabis under state law and establishing a regulatory system for the cultivation, manufacturing,

1 sale and delivery of cannabis for use by adults 21 years and older. (Ballot Pamp., Gen. Elec.
2 (Nov. 8, 2016) text of Prop. 64, pp. 178-210.)

3 15. On June 27, 2017, the Legislature enacted the Medicinal and Adult-Use Cannabis
4 Regulation and Safety Act (MAUCRSA). MAUCRSA represents a single, comprehensive
5 regulatory structure for both medical and recreational cannabis. (Bus. & Prof. Code, § 26000 et
6 seq.)

7 **II. SUMMARY OF THE BUREAU'S RULEMAKING HISTORY UNDER MAUCRSA**

8 16. In 2017, the Bureau adopted emergency regulations to implement and interpret
9 MAUCRSA. (Cal. Reg. Notice Register 2017, No. 51-Z, p. 1958 [operative Dec. 7, 2017].) The
10 regulations would have been repealed by operation of law on June 6, 2018. However, the Bureau
11 readopted the emergency regulations with amendments. (Cal. Reg. Notice Register 2018, No. 24-
12 Z, p. 934 [operative June 6, 2018].)

13 17. On July 13, 2018, the Bureau issued the Certificate of Compliance (i.e., formal
14 notice) required by the Administrative Procedure Act to adopt the emergency regulations as
15 permanent, nonemergency regulations.

16 18. On December 3, 2018, the Bureau transmitted the rulemaking file to the Office of
17 Administrative Law (OAL).

18 19. The OAL approved the regulatory action and filed the regulations with the California
19 Secretary of State. The final nonemergency regulations became effective on January 16, 2019.
20 (Cal. Reg. Notice Register 2019, No. 4-Z, p. 175.)

21 20. The final nonemergency regulations included the Cannabis Delivery Regulation, the
22 regulation at the core of this lawsuit.

23 **FIRST CAUSE OF ACTION**

24 **(Declaratory and Injunctive Relief against Respondents Pursuant to Code of Civil** 25 **Procedure Sections 526, 527, and 1060)**

26 21. The Bureau incorporates by reference paragraphs 1 through 20, above.

27 22. An actual and present controversy exists between Petitioner, Respondents, and Real
28 Party in Interest/Intervenor concerning the validity of the Cannabis Delivery Regulation, and

1 whether the County Cannabis Codes violate MAUCRSA and the Cannabis Delivery Regulation.
2 The Cannabis Delivery Regulation permits delivery by a state licensed commercial cannabis
3 retailer to a physical address to any jurisdiction within the State of California as long as the
4 licensee complies with MAUCRSA and its implementing regulations. Inconsistent with
5 MAUCRSA and the Cannabis Delivery Regulation, the County Cannabis Codes prohibit
6 commercial cannabis retailers licensed by the Bureau and other local jurisdictions from delivering
7 in unincorporated Santa Cruz County, but allow delivery by commercial cannabis retailers
8 licensed by the Bureau and Santa Cruz County.

9 23. A judicial declaration that the Cannabis Delivery Regulation is valid, that the County
10 Cannabis Codes violate MAUCRSA, and the Cannabis Delivery Regulation is necessary and
11 appropriate to prevent the Respondents from enforcing local laws that contravene MAUCRSA
12 and the Cannabis Delivery Regulation.

13 24. A judicial order permanently enjoining the Respondents from enforcing the Santa
14 Cruz County Code sections 7.130.050, subdivisions (A) & (C), 7.130.090, and 7.130.110 (A) &
15 (F) is necessary and appropriate to prevent Respondents from violating the Bureau's statutory
16 rights to regulate commercial cannabis activities within the state and the statutory rights of the
17 Bureau's licensees to deliver commercial cannabis to any jurisdiction within the state.

18 PRAYER

19 WHEREFORE, the California Bureau of Cannabis Control prays that:

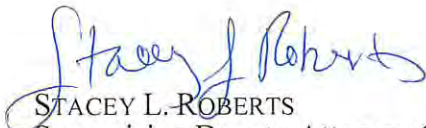
- 20 1. This Court declare that the California Code of Regulations, title 16, section 5416,
21 subdivision (d) is valid;
- 22 2. This Court declare that Respondents' County Cannabis Codes violate MAUCRSA and
23 California Code of Regulations, title 16, section 5416, subdivision (d);
- 24 3. This Court issue a permanent injunction to prohibit Respondents from enforcing the
25 Santa Cruz County Code sections 7.130.050, subdivisions (A) & (C), 7.130.090, and
26 7.130.110 (A) & (F) because they violate MAUCRSA and the California Code of
27 Regulations, title 16, section 5416, subdivision (d);
- 28 4. Judgment be entered in favor of the Bureau against Respondents;

- 1 5. The Bureau be awarded costs incurred in defending this action; and
2 6. The Bureau be awarded such further relief that the Court may deem just and proper.
3
4

5 Dated: January 10, 2020

Respectfully Submitted,

6 XAVIER BECERRA
7 Attorney General of California
8 HARINDER K. KAPUR
9 Senior Assistant Attorney General

10 
11 STACEY L. ROBERTS
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13 Attorneys for Real Party in
14 Interest/Intervenor/Plaintiff
15 California Bureau of Cannabis Control

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