



AGENDA NO: C-1

MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: October 17, 2017

FROM: Chris F. Neumeyer, Assistant City Attorney

SUBJECT: Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program to Permit Two Medical Cannabis Dispensaries, Wholesale Medical Cannabis Distribution and Medical Cannabis Deliveries, while Prohibiting All Other Commercial Cannabis Operations; Regulates and Permits Personal Cannabis Cultivation; and, Amends Current Secondhand Smoke Regulations

RECOMMENDATION

Staff recommends Council discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 612: An Ordinance of the City Council of the City of Morro Bay, California, adding Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 of the Morro Bay Municipal Code to Permit Certain Medical Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor), to Prohibit All Other Medical Commercial Cannabis Uses, and to Prohibit All Adult-Use (Recreational) Commercial Cannabis Uses; Repealing Chapter 9.06 of Title 9 of the Morro Bay Municipal Code and Replacing It with a New Chapter 9.06 (Personal Cannabis Cultivation) to Regulate Personal Cannabis Cultivation; and, Amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Morro Bay Municipal Code to Strengthen Regulation of Secondhand Smoke and Expressly Include Cannabis and Electronic Smoking Devices.

FISCAL IMPACT

The ordinance being introduced allows City regulatory and administrative costs associated with permitting commercial cannabis operations to be recouped through City fees.

The ordinance also allows a fee to be charged for issuance of a personal cannabis cultivation permit. However, the intent is no fee will be charged for a personal cultivation permit until July 1, 2018, and thereafter only a nominal fee be charged. These fees will be set at a later time by Council resolution.

Council on October 10, 2017 directed staff to conduct analysis and provide a further report on a possible cannabis tax measure to be sent to the City's voters for consideration. The election would likely be the next regular election in November of 2018 (unless a special election were held). The requested report will be brought to Council for review and discussion by Summer, 2018 for timely consideration of a Fall, 2018 cannabis tax ballot measure.

The ordinance being introduced encourages revenue generating development agreements be sought with commercial cannabis operations permitted in the City.

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City Manager Review: _____	City Attorney Review: _____

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BACKGROUND

California voters on November 8, 2016 approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Proposition 64, in conjunction with recent SB 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act, or “MAUCRSA”), have legalized limited personal use, possession and cultivation of cannabis, and have also created a state regulatory structure to permit commercial cannabis businesses. A failure to address these operations by January 1, 2018 will cede some local control to the State.

Starting in January, 2017, the City has reviewed these issues and their impact on Morro Bay through multiple Council meetings, public workshops and the work of a Council Cannabis Subcommittee composed of Councilmembers Robert Davis and Marlys McPherson, assisted by Martin Lomeli (Interim City Manager), Chris Neumeyer (Assistant City Attorney), Chief Greg Allen (Police Chief), Chief Steve Knuckles (Fire Chief), Commander Jody Cox (Police Commander), Scot Graham (Community Development Director) and Ikani Taumoepeau (Deputy City Manager).

Please refer to attached Staff Report from October 10, 2017 City Council special meeting entitled “Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use” for additional background.

On October 10, 2017, the Council provided direction (after consideration of recommendations from the Council Cannabis Subcommittee) for the details of a cannabis ordinance.

DISCUSSION

The Council requested staff to prepare a cannabis ordinance for first reading at the October 24, 2017 regular Council meeting. That Ordinance No. 612 is attached. Below is a summary consistent with prior Council direction. Further changes or clarifications (since discussion on October 10, 2017) are italicized and underlined. Further direction is sought on **highlighted** items.

1. Personal Cultivation - Regulate as follows:

a. Limitations.

- i. Total of six plants allowed to be cultivated at a private residence.
- ii. Allow up to two of the six plants to be grown outdoors, if outdoor cultivation is at least ten feet from property line, cannot be seen from public spaces and adheres to general regulations. **No height limitation (e.g., six feet?) on outdoor cultivation, if cannot be seen from public spaces? (Section 9.06.030((B)(2).)**
- iii. Comply with all state and City regulations governing personal cannabis cultivation.

b. Reasonable Regulations. Adopt local health and safety regulations including:

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- i. Cultivation in a secured space inaccessible to minors and trespassers.
 - ii. Odor control so not detectable from neighboring properties or public place.
 - iii. Cultivation not visible from any public place.
 - iv. Electricity draw to not exceed maximum rating of the approved electrical panel for residence.
 - v. Artificial lighting shielded so that completely confined to private residence.
 - vi. Private residence must have fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and, private residence shall not be used primarily or exclusively for cannabis cultivation.
 - vii. Cultivation shall not displace required parking in a garage.
 - c. Permit.
 - i. Require local permit issued pursuant to a “self-inspection/certification program” which affirms compliance with local and state regulations.
 - ii. Charge nominal fee for permit, and waive fee for applications submitted from January 1, 2018 through June 30, 2018.
 - iii. Require property owner consent.
 - iv. Non-transferable permit.
 - v. No annual renewal.
 - vi. **Require scaled property site plan and a scaled diagram of the floor plan for the cultivation site? (Section 9.06.040(A)(5).)**
 - vii. **Require provision of itemized list of compliance measures, such as description of lighting and equipment used? (Section 9.06.040(A)(6).)**
 - d. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of permit.
2. Public Use / Smoking Regulations - Take following actions:
 - a. Maintain current strict smoking prohibitions in City code.
 - b. Amend current exemptions in order to strengthen prohibition:

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the health, safety and welfare of the residents and visitors of Morro Bay. The Committee after review will recommend to City Manager whether a permit should be issued or not. Proposed criteria to be considered include the following "Merit List" factors:

1. Operation plan for the business, including attention to impact of the business on the community.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.
 11. Requirements of local law and applicable State law.
 12. Any additional criteria of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the citizens and visitors of the City of Morro Bay.
- iv. Third Step is review by City Manager, or his designee, of Committee recommendations and then a final decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to the criteria in the Merit List. The decision shall be final and non-appealable.
- e. Term. Initial term of 1-2 years (depending on when review conducted for a renewal, see section (g) below), and thereafter a 2 year term.
- f. Type. Regulatory permit rather than a land use permit.
- g. Renewal. Biennial renewal shall generally occur. Renewal subject to three step review process established above for permit issuance, to determine if best serves community (health, safety and public welfare criteria) for permit to be renewed. Thereafter consider renewals only every other year. Intent is for City to review one permit a year (rather than both permits every year), so assuming the City initially permits two medical marijuana dispensaries, after the first year passes, the City shall select one of the two permits for review, and thereafter shall review permits every other year.
- h. Fees. Recover from each operator all City regulatory and administrative costs specific to each operator.
- i. Revenue. Seek development agreements with operators (in context of considering sending a cannabis tax measure to City voters in November, 2018).

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- j. Regulations. Reasonable requirements such as:
 - i. Strict odor control.
 - ii. Strong security requirements including alarm system and development of security plan.
 - iii. Background checks on employees.
 - iv. Property owner consent.
 - v. Indemnification of the City.
 - vi. Cameras in use 24/7 and footage available to City.
 - vii. Inspection authority for City.
 - viii. Signage restrictions.
 - ix. Insurance requirements.
 - x. Record keeping requirements and records available to City.
 - xi. Development of operations plan and cash handling plan.
 - xii. Provision of floor and site plan.
 - xiii. Restriction on sales and packaging of cannabis edibles to prevent consumption by minors.
 - xiv. No medical cannabis recommendations on-site.
 - xv. Requirement for use of opaque packaging.
 - xvi. No minors allowed unless a qualified patient or primary caregiver, and accompanied by parent or guardian.

- k. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of City permit authorizing operation.

4. Dispensaries (Recreational) - Prohibit.

5. Commercial Cultivation (Medical and Recreational) - Prohibit.

6. Manufacturing and Testing (Medical and Recreational) - Prohibit with reconsideration of ban after a possible cannabis tax measure sent to City voters at regular election in November, 2018.

7. Deliveries (Medical) - Allow as follows:

- a. Require issuance of a City business license.
- b. Proof of association with lawful medical cannabis dispensary (either located in City or elsewhere).
- c. Require delivery driver to maintain records, subject to inspection by City and law enforcement, including state and local permit, personal identification and copy of delivery order(s).

8. Deliveries (Recreational) - Prohibit.

9. Wholesale Distribution (Medical) - Allow. These operators distribute cannabis between licensees (i.e., from a cultivation site to a retailer). They do not conduct retail sales. Strict

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regulations similar to those governing medical cannabis dispensaries.

10. Wholesale Distribution (Recreational) - Prohibit.

11. Microbusinesses (Medical and Recreational) - Prohibit. These are combination businesses that engage in retail sales, cultivation, manufacturing and distribution.

CONCLUSION

Staff recommends Council discuss the proposed Ordinance No. 612 and introduce it for first reading by title only.

ATTACHMENTS

- 1) Proposed Ordinance No. 612
- 2) Staff Report from October 10, 2017 entitled "Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use."
- 3) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions.
- 4) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions also includes 600 Foot Buffer from Residential.
- 5) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions also includes 100 Foot Buffer from Residential.

ORDINANCE NO. 612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN MEDICAL COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR), TO PROHIBIT ALL OTHER MEDICAL COMMERCIAL CANNABIS USES, AND TO PROHIBIT ALL ADULT-USE (RECREATIONAL) COMMERCIAL CANNABIS USES; REPEALING CHAPTER 9.06 OF TITLE 9 OF THE MORRO BAY MUNICIPAL CODE AND REPLACING IT WITH A NEW CHAPTER 9.06 (PERSONAL CANNABIS CULTIVATION) TO REGULATE PERSONAL CANNABIS CULTIVATION; AND, AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 OF THE MORRO BAY MUNICIPAL CODE TO STRENGTHEN REGULATION OF SECONDHAND SMOKE AND EXPRESSLY INCLUDE CANNABIS AND ELECTRONIC SMOKING DEVICES

WHEREAS, in 1996 California voters approved Proposition 215, the Compassionate Use Act (“CUA”), codified as Section 11362.5 of the Health and Safety Code, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), codified as Sections 11362.7, *et seq.*, of the Health & Safety Code, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, and which also legalized limited personal recreational cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, the MAUCRSA provides that the State of California will begin issuing licenses in 2018 for both medical and recreational cannabis businesses in 20 different categories, which are found in Section 26050 of the Business & Professions Code, and which categories include cannabis cultivation, manufacturer, testing, retailer, distributor, and microbusiness; and

WHEREAS, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may completely prohibit the establishment or operation of any or all of the 20 different medical and recreational business operations to be licensed by the state under Section 26050 of the Business & Professions Code; and

WHEREAS, the MAUCRSA, Section 26055(d) of the Business & Professions Code, provides that a state commercial cannabis license may not be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation; and

WHEREAS, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may adopt and enforce local ordinances to regulate any or all of the 20 different medical and recreational business operations to be licensed by the state under Section 26050 of the Business & Professions Code, including, but not limited to, local zoning and land use requirements; and

WHEREAS, the MAUCRSA, Section 26201 of the Business & Professions Code, provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state for the 20 different medical and recreational business operations to be licensed by the state under Business & Professions Code § 26050, shall be the minimum standards, and a local jurisdiction may establish additional standards, requirements, and regulations; and

WHEREAS, the AUMA, Health & Safety Code § 11362.1(a)(3), makes it lawful for any person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of cannabis] outdoors upon the grounds of a private residence”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b), explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis permitted under Health & Safety Code § 11362.1(a)(3), so long as the city does not completely prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(a)(2), further restricts such personal cannabis cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place”; and

WHEREAS, several California cities have reported negative impacts of cannabis cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of cannabis), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests); and

WHEREAS, cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

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WHEREAS, due to the value of cannabis plants and their strong smell (which alerts others to their location), cannabis cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety; and

WHEREAS, the indoor cultivation of cannabis has potential adverse effects on the structural integrity of the buildings in which cannabis is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the buildings, its occupants, and neighboring buildings and residents; and

WHEREAS, unregulated indoor cultivation of cannabis can be harmful to the public health, safety and welfare, because electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness and can contaminate soil and water, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering and/or crime; and

WHEREAS, unregulated cannabis cultivation is likely to generate these negative effects on the public health, safety, and welfare in the city, based on the experiences of other cities; and

WHEREAS, absent clear regulation, cannabis cultivation in the city poses a potential threat to the public peace, health, and safety, and, unless the city takes action to regulate it, the secondary impacts described above are likely to occur; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors, and businesses, and in preserving the peace and quiet of the neighborhoods within the city, by regulating personal cannabis cultivation; and

WHEREAS, the AUMA, Health & Safety Code § 11362.3(a)(1-2), provides that the AUMA shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places or in any place where smoking tobacco is prohibited; and

WHEREAS, secondhand smoke can result from many types of smoking, including the smoking of tobacco, the smoking of cannabis, and the use of electronic smoking devices (also known as "vaping"); and

WHEREAS, the federal Environmental Protection Agency has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to second-hand smoke has serious health effects including asthma in children and adults; lung, sinus and breast cancer; heart disease; low birth-weight babies; Sudden Infant Death Syndrome (SIDS); increased respiratory infections in children; and death; and

WHEREAS, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, has concluded that exposure to secondhand smoke is a leading cause of preventable death in the United States; and

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WHEREAS, the U.S. Surgeon General and the California Environmental Protection Agency have repeatedly identified secondhand smoke as a health hazard; and

WHEREAS, exposure to secondhand smoke anywhere is injurious to health, and exposure to secondhand smoke from an adjacent or nearby property can occur at sustained and significant levels, including but not limited to for reasons of the volume of smoking, the proximity of smoking, the number of smokers, or the direction and amount of wind; and

WHEREAS, non-consensual exposure to the strong odor of secondhand smoke is offensive to many people, an obstruction to the free use of property, and interferes with the comfortable enjoyment of life and property; and

WHEREAS, non-consensual exposure anywhere to secondhand smoke constitutes a public nuisance because of interference with the health, safety and welfare of members of the public; and

WHEREAS, to provide for the public health, safety and welfare of the residents and visitors of the City of Morro Bay, the City desires to protect the public from exposure to secondhand smoke where they live, work and play; and

WHEREAS, the City of Morro Bay (“City”) previously adopted Chapter 9.06 (“Medical Cannabis Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to prohibit and regulate specific cannabis commercial and individual cannabis uses in the City;

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City now desires to repeal existing Chapter 9.06, to be replaced with a new Chapter 9.06 (“Personal Cannabis Cultivation”) in Title 9, so as to permit and reasonably regulate personal cultivation of up to six cannabis plants at a private residence, so as to protect the public health, safety and welfare;

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City now desires to add a new Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 (permit certain commercial medical cannabis uses (retail sales, deliveries and (wholesale) distributor), while also prohibiting both all other commercial medical cannabis uses as well as all commercial adult-use (recreational) cannabis uses; and

WHEREAS, the City previously adopted Chapter 9.24 (“Secondhand Smoking Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke; and

WHEREAS, pursuant to its police power, the City now desire to amend Chapter 9.24 (“Secondhand Smoking Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to expressly include cannabis smoking and the use of electronic smoking devices, to strengthen the regulation of secondhand smoke, and to increase the penalties for violation of the regulation of secondhand smoke; and

WHEREAS, this Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015, the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult Use of Cannabis Regulation and Safety Act of 2017, to protect, promote and maintain the public health, safety, and welfare of City residents and visitors in relation to cannabis related uses and activities; and

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WHEREAS, pursuant to the above-described express statutory authority and the City’s police power, the City has the authority to prohibit, permit and regulate any and all commercial cannabis activities (whether not-for-profit or for-profit) that may otherwise be permitted by the State of California under the MCRSA, the AUMA, and the MAUCRSA; and

WHEREAS, the City finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to both the exemption provided by Section 26055(h) of the Business and Professions Code as well as Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines; and

WHEREAS, nothing in this Ordinance shall be construed to allow any person to engage in conduct that endangers others or causes a public nuisance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. THE CITY COUNCIL OF THE CITY OF MORRO BAY HEREBY MAKES THE FOLLOWING FINDINGS:

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. The prohibitions on, and regulations of, cannabis activities established by this Ordinance are necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.
- C. The regulations of personal cultivation of cannabis established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.
- D. The regulations of secondhand smoke established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

SECTION 2. CHAPTER 9.06 OF TITLE 9 OF THE MORRO BAY CITY CODE IS HEREBY REPEALED IN ITS ENTIRETY AND THE FOLLOWING NEW CHAPTER 9.06, (PERSONAL CANNABIS CULTIVATION) IS HEREBY ADDED TO TITLE 9 OF THE MORRO BAY CITY CODE AS FOLLOWS:

“Chapter 9.06 - PERSONAL CANNABIS CULTIVATION.

Sec. 9.06.010 - Purpose and intent.

Sec. 9.06.020 - Definitions.

Sec. 9.06.030 - Personal cannabis cultivation.

Sec. 9.06.040 - Personal cannabis cultivation permit.

Sec. 9.06.050 - Violations and penalties; public nuisance.

Sec. 9.06.010 - Purpose and intent.

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The purpose and intent of this chapter is to establish reasonable regulations, consistent with the meaning of Section 11362.2 of the Health & Safety Code, and as may be amended, for the cultivation of up to six (6) cannabis plants at a private residence.

Sec. 9.06.020 - Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

- A. "Accessory structure" means a subordinate building located on the same lot as a private residence, the use of which is customarily part of, incidental and secondary to that of the private residence, and which does not change the character of the residential use of the private residence.
- B. "Applicant" means a person who files an application for a permit under this chapter.
- 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.
- D. "City Manager" means the City Manager of the City of Morro Bay, and includes his/her designees.
- E. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of one or more cannabis plants or any part thereof.
- F. "Cultivation site" means the real property on which cannabis cultivation occurs.
- G. "Director" means the Director of Community Development for the City of Morro Bay, and includes his/her designees.
- H. "Marijuana" has the same definition as provided for "cannabis" in this chapter.
- I. "Permit" means a personal cannabis cultivation permit issued pursuant to this chapter.
- J. "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- K. "Private residence" has the same meaning as the term is defined in Section 11362.2(b)(5) of the Health & Safety Code, and as may be amended, which provides that private residence "means a house, an apartment unit, a mobile home, or other similar dwelling."

Sec. 9.06.030 - Personal cannabis cultivation.

- A. Prohibition. Cannabis cultivation is prohibited in all zones of the city. No person shall engage in the cultivation of cannabis in the city for any purpose.

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B. Limited Exemption. The prohibition on cannabis cultivation in above subsection (A) does not apply to the indoor cultivation of cannabis, and the outdoor cultivation of up to two (2) plants, at a private residence, conducted both pursuant to a valid and current permit as provided for in this chapter, as well as with complete adherence to the following regulations:

1. Six plants total. Total cultivation is limited to no more than six (6) living cannabis plants at any one time.
2. Two plants outdoors. Two (2) of the six (6) living plants that may be cultivated, at any one time, may be cultivated outdoors, if the outdoor cultivation is no less than ten (10) feet from the property line of the cultivation site.
3. Indoor cultivation. Indoor cultivation shall occur entirely within a private residence or within an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
4. Locked space. The six (6) living plants and any cannabis produced by the plants in excess of 28.5 grams shall be kept within a locked space, inaccessible to minors and trespassers, located either within the private residence or upon the grounds of the private residence. A locked space for purposes of outdoor cultivation means a locked and secure enclosure completely surrounding the cultivation site which renders the cultivation site inaccessible to minors and trespassers (e.g., a secured and locked garden fence, or a secured and locked backyard fence).
5. Visibility. The six (6) living plants (whether grown indoors or outdoors) and any cannabis produced by the plants in excess of 28.5 grams shall not be visible from any public right of way, or in any manner be visible by normal unaided vision from a place regularly accessible to the general public.
6. Odor.
 - a. The odor resulting from all cannabis cultivation shall not be detectable by human senses from any neighboring property or public right of way.
 - b. As necessary (which final determination shall be made by the Director), to ensure that no odor resulting from cannabis cultivation shall be detectable by human senses from any neighboring property or public right of way, all cultivation will occur indoors and/or a cannabis cultivation site shall install and continuously operate a functioning ventilation and filtration system which complies with all applicable building code regulations, including obtaining all required permits and approvals.
7. Nuisance Activity. Cultivation shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste.
8. Fire Extinguisher. A working portable fire extinguisher, which complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the same room as indoor cannabis cultivation.
9. Electricity.

- a. The collective draw from all electrical appliances at the cannabis cultivation site shall not exceed the maximum rating of the approved electrical panel for the private residence where the cannabis is being cultivated.
 - b. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel.
10. Lighting. Any lighting fixture or combination of lighting fixtures used for cannabis cultivation shall:
- a. not exceed the rated wattage and capacity of the circuit breaker; and
 - b. shall be shielded so as to completely confine light and glare to the interior of the private residence or fully enclosed accessory structure.
11. Private Residence. Any private residence used for cultivation shall:
- a. include a fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and
 - b. shall not be used primarily or exclusively for cannabis cultivation.
12. Garage. Cultivation shall not displace required parking in a garage.

C. Additional Regulations. Further rules, regulations, procedures, and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance of the City Council, or by the Director (upon authorization by resolution of the City Council).

Sec. 9.06.040 - Personal cannabis cultivation permit.

- A. Permit Application. An applicant shall submit an application to the Director, in a form provided by the city, and the application shall contain the following information:
- 1. The address of the property where cannabis cultivation is to occur.
 - 2. The name of the applicant and a statement as to whether the applicant is an owner or tenant of the property where cultivation is to occur.
 - 3. If the applicant is not the owner of the property, property owner acknowledgement, in a form provided by the city, that the property owner consents to the cultivation of cannabis at the property.
 - 4. Applicant certification, through a form provided by the city, that the applicant has inspected the proposed cultivation site, and the proposed cultivation site meets the requirements of this chapter, state law, and any other applicable chapters of the Morro Bay City Code, including but not limited to health, safety and welfare requirements.
 - 5. A scaled property site plan and a scaled diagram of the floor plan of the residence, the fully enclosed and secure accessory structure, and/or the outdoor area to be used for cultivation at the cultivation site.

6. An itemized list of measures taken to comply with the provisions of this chapter, including identification and description of lighting and equipment to be used for the cannabis cultivation at the residence.
7. Any other information the Director deems necessary to efficiently administer applications and permits so as to further the purposes of this chapter.

B. Action on Applications.

1. Upon receipt of a completed application and payment of the application and permit fees, the Director shall review the information contained in the application to determine whether the applicant shall be issued the permit.
2. If the Director determines that the applicant has completed the application improperly, the Director shall notify the applicant within 30 days of receipt of the application. Applicant will then have 30 days to complete the application. If the application is not submitted within that time frame, or is resubmitted incomplete, the Director shall deem the application abandoned, and the applicant may then resubmit a new application for review.
3. Within 60 days of receipt of a completed application, the Director shall complete the review, approve or deny the application, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
4. The Director shall grant the application upon affirmative findings for all of the following requirements:
 - a. The applicant, and the cannabis cultivation site, are both in compliance with state law governing cannabis cultivation; and
 - b. The applicant, and the cannabis cultivation site, are both in compliance with all of the provisions of this chapter, including any regulations promulgated under this chapter; and
 - c. The cannabis cultivation site complies with the building code, fire code, plumbing code, and any other such applicable code adopted by the city.
5. At the Director's sole discretion, the time limits in this Section 9.06.040(B) may be extended upon written notification from the Director to the applicant.

C. Permit not transferable. A permit issued pursuant to this chapter is non-transferable and is specific to both the permit holder and the private residence for which it was issued.

D. Permit revocation. Permits issued under this section may be revoked by the Director upon making any of the following findings:

1. The permit was issued in error or the application contained materially incorrect or false information.
2. The cannabis cultivated at the cultivation site has been sold or used for any commercial use, or any other use or activity prohibited by city or state law, including but not limited to Sections 11362.1, 11362.2, and 11352.3 of the Health & Safety Code, and as they may be amended.

3. The cannabis cultivation site has become a public nuisance or has been operated in a manner constituting a public nuisance.
 4. The cannabis cultivation is not in compliance with the provisions of this chapter.
- E. Appeals. Any decision regarding an application for, or the revocation of, a personal cannabis cultivation permit may be appealed to the City Manager by an applicant or (former) permit holder as follows:
1. Appellant must file a written appeal with the Morro Bay City Clerk within 10 calendar days of the decision. The written appeal shall specify the person making the appeal, identify the decision appealed from, state the reasons for the appeal, and include any evidence in support of the appeal.
 2. Notice of the time and place of an appeal hearing shall be provided to the appellant within 30 days of receipt of the written appeal by the Morro Bay City Clerk.
 3. The appeal hearing shall be held within 60 days of the filing of the written appeal with the Morro Bay City Clerk, unless the 60-day time limit is waived by the appellant, or unless the City Manager continues the appeal hearing date for good cause and upon written notification to the appellant.
 4. The City Manager shall review the facts of the matter, written documents submitted for review, the basis for making the decision which is under appeal, and then determine whether the Director's decision should be reversed or affirmed. The determination made shall be in writing, shall set forth the reasons for the determination, and shall be final.
 5. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any final determination.
- F. Fees. An application fee set by resolution of the City Council may be required for formal processing of every application and appeal made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon indoor cannabis cultivators and their operations.

Sec. 9.06.050 - Violations and penalties; public nuisance.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code, except for as preempted by state law; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Public nuisance abatement.
1. Cannabis cultivation that is conducted in violation of any provisions of this chapter is deemed a public nuisance, which may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code.

2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance and the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.”

SECTION 3. CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE AS FOLLOWS:

“CHAPTER 5.50 - COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM

- Sec. 5.50.010 - Purpose and intent.
- Sec. 5.50.020 - Commercial cannabis operations prohibited without City permit.
- Sec. 5.50.030 - Definitions.
- Sec. 5.50.040 - Prohibited commercial cannabis operations.
- Sec. 5.50.050 - Permitted commercial cannabis operations.
- Sec. 5.50.060 - Commercial cannabis operation permit.
- Sec. 5.50.070 - Applications for commercial cannabis operation permit.
- Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.
- Sec. 5.50.090 - Issuance of commercial cannabis operation permit.
- Sec. 5.50.100 - Renewal of commercial cannabis operation permit.
- Sec. 5.50.110 - General operating standards and restrictions.
- Sec. 5.50.120 - Retail (medical) operating standards and restrictions.
- Sec. 5.50.130 - Wholesale distribution (medical) operating standards and restrictions.
- Sec. 5.50.140 - Delivery (medical) operating standards and restrictions.
- Sec. 5.50.150 - Administration.
- Sec. 5.50.160 - Fees.
- Sec. 5.50.170 - Suspension and revocation.

Sec. 5.50.180 - Violations and penalties; public nuisance

Sec. 5.50.190 - Service of notices.

Sec. 5.50.200 - Prohibitions.

Sec. 5.50.210 - Nonconforming use.

Sec. 5.50.220 - Severability.

Sec. 5.50.010 - Purpose and intent.

- A. The purpose of this chapter is to establish a comprehensive set of regulations with an attendant regulatory permit applicable to the operation of certain types of commercial cannabis operations, while simultaneously establishing an express prohibition on certain other types of commercial cannabis operations.
- B. The regulations for, and prohibitions on, specific types of commercial cannabis operations are enacted to preserve the public health, safety, and welfare of the residents and visitors of the City of Morro Bay, consistent with California’s Compassionate Use Act of 1996, California’s Medical Marijuana Program Act of 2003, the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and all applicable state laws governing commercial cannabis activities.
- C. The issuance of a Commercial Cannabis Operation Permit shall constitute a revocable privilege and shall not create or establish any vested rights for the development or use of a property.
- D. This chapter and its regulations shall be known as the “Commercial Cannabis Operations Regulatory Program.”

Sec. 5.50.020 - Commercial cannabis operation prohibited without City permit.

It shall be unlawful to own, establish, operate, use, or permit the establishment or activity of a commercial cannabis operation, or to participate in commercial cannabis operations as an employee, contractor, agent, volunteer, or in any manner or capacity, other than as provided in this chapter and pursuant to both a current and valid City of Morro Bay Commercial Cannabis Operation Permit, as well as the equivalent state license for such commercial cannabis operation as provided for by Section 26050 of the Business & Professions Code, and as amended. The prohibition contained in this section shall include renting, leasing, or otherwise permitting a commercial cannabis operation to occupy or use a location, vehicle, or other mode of transportation.

Sec. 5.50.030 - Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

- A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.

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- B. "Applicant" means a person who files an application for a permit under this chapter.
- 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.
- D. "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 division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- E. "Cannabis Permit Committee" is composed of the Fire Chief, Police Chief, Finance Director, City Attorney, and/or their designees.
- F. "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.
- G. "City Attorney" means the City of Morro Bay City Attorney, and includes his/her designee(s).
- H. "City Manager" means the City of Morro Bay City Manager, and includes his/her designee(s).
- I. "Commercial cannabis operation" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 ("Personal Cultivation of Cannabis") of this Code or as preempted by state law.
- J. "Commercial Cannabis Operation Permit" shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in this chapter and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of this chapter, state law, and the specific permit.
- K. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- L. "Day care center" means, as the term is understood by Section 26001(o) of the Business and Profession Code, and as may be amended, any 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.

- M. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.
- N. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).
- O. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- P. “Distributor” means a person engaged in distribution.
- Q. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- R. “Employee” means any person (whether paid or unpaid) who provides regular labor or regular services for a commercial cannabis operation, including, but not limited to, at the location of a commercial cannabis operation. The term “employee” includes managers and owners as used in this chapter.
- S. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.
- T. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).
- U. “Fire Chief” means the City of Morro Bay Fire Department Chief, and includes his/her designee(s).
- V. “Identification card” has the same definition as provided for in Health and Safety Code section 11362.7(g), and as may be amended, defined as “a document issued by the [State Department of Health Services] that identifies a person authorized to engage in the medical use of cannabis and the person’s designated primary caregiver, if any.”
- W. “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.
- X. “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- Y. “Lighting” means the act of illuminating as well as the effect achieved by the arrangement of lights.
- Z. “Live scan” means a system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data

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along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the City Council.

- AA. “Manager” means an employee responsible for management and/or supervision of a commercial cannabis operation.
- BB. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.
- CC. “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; includes the activity of manufacturing.
- DD. “Marijuana” has the same definition as provided for “cannabis” in this chapter.
- EE. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.
- FF. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, *et seq.*).
- GG. “Merit List” shall refer to the criteria listed in Section 5.50.090(C) of this chapter.
- HH. “Minor” means a person under twenty-one (21) years of age.
- II. “Owner” means the owner of a commercial cannabis operation.
- JJ. “Microbusiness” shall have the same definition as provided for in Section 26070 of the Business and Professions Code, and as may be amended.
- KK. “Nursery” means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- LL. “Operations Officer(s)” shall refer to the Director, the Fire Chief, the Police Chief, the Finance Director and the City Manager, individually or collectively.
- MM. “Package” means any container or receptacle used for holding cannabis or cannabis products.
- NN. “Packaging” or “packages” means an activity involved with placing cannabis or cannabis products in a package.

- OO. “Park” means public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball court, tennis court, pedestrian or bicycle paths, beaches, open space, or similar public land within the city or which is under the control, operation or management of the city recreation and parks department.
- PP. “Permittee” means a person issued a Commercial Cannabis Operation Permit by the City of Morro Bay.
- QQ. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- RR. “Person with an identification card” has the same definition as provided for in Health and Safety Code section 11362.7(c), and as may be amended, defined as “an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.”
- SS. “Physician’s recommendation” means a determination from a physician that a patient’s medical cannabis use is deemed appropriate and is recommended by the physician on the basis of the physician has determined that the patient’s health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief, in strict accordance with the Compassionate Use Act of 1996 (Proposition 215), and as understood by Section 11362.5 of the Health and Safety Code.
- TT. “Religious institution” means any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education and related religious activities.
- UU. “Police Chief” means the City of Morro Bay Police Chief, and includes his/her designee(s).
- VV. “Police Department” means the City of Morro Bay Police Department.
- WW. “Premises” means a single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single “premises.”
- XX. “Primary caregiver” has the same definition as provided for in Section 11362.7(d) of the Health and Safety Code, and as may be amended, including being “the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person” A “primary caregiver” shall also meet the requirements of Health and Safety Code section 11362.7(e), and as may be amended, which provide that a “primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.”
- YY. “Qualified Patient” has the same definition as provided for in Health and Safety Code section 11362.7(f), and as may be amended, defined as “a person who is entitled to

the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.”

ZZ. “Retailer” means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.

AAA. “School” means, as the term is understood by Section 26054(b) of the Business and Profession Code, and as may be amended, as a place of instruction in kindergarten or any grades 1 through 12.

BBB. “Site” means the premises and actual physical location of a Commercial Cannabis Operation, as well as its accessory structures and parking areas.

CCC. “Testing laboratory” or “testing” refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of laboratory testing.

DDD. “Youth center” means, as the term is understood by Section 26001(av) of the Business and Profession Code, and as may be amended, 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, or similar amusement park facilities.

Sec. 5.50.040 - Prohibited commercial cannabis operations.

A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of cultivation, manufacturer, testing, retail (adult-use), distributor (adult-use), or microbusiness are prohibited, including but not limited to commercial cannabis activities licensed by the state license classifications listed below as provided in Business and Professions Code § 26050:

1. Type 1 = Cultivation; Specialty outdoor; Small.
2. Type 1A = Cultivation; Specialty indoor; Small.
3. Type 1B = Cultivation; Specialty mixed-light; Small.
4. Type 1C = Cultivation; Specialty cottage; Small.
5. Type 2 = Cultivation; Outdoor; Small.
6. Type 2A = Cultivation; Indoor; Small.
7. Type 2B = Cultivation; Mixed-light; Small.
8. Type 3 = Cultivation; Outdoor; Medium.
9. Type 3A = Cultivation; Indoor; Medium.
10. Type 3B = Cultivation; Mixed-light; Medium.
11. Type 4 = Cultivation; Nursery.
12. Type 5 = Cultivation; Outdoor; Large.
13. Type 5A = Cultivation; Indoor; Large
14. Type 5B = Cultivation; Mixed-light; Large.
15. Type 6 = Manufacturer 1.
16. Type 7 = Manufacturer 2.
17. Type 8 = Testing.
18. Type 10 = Retailer (adult-use / non-medical).
19. Type 11 = Distributor (adult-use / non-medical).
20. Type 12 = Microbusiness.

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- B. The prohibition provided by above subsection (A) includes any similar activities authorized under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of cultivation, manufacturer, testing, retail (adult-use), distributor (adult-use), microbusiness, or similar operations (including non-profit, collective or cooperative operations).

Sec. 5.50.050 - Permitted commercial cannabis operations.

- A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of retail (medical) or distributor (medical) are allowed subject to issuance and maintenance of a valid and current City Commercial Cannabis Operation Permit, continuing adherence to this entire chapter and all applicable city and state regulations and laws, and issuance and maintenance of a valid and current equivalent state license type listed below, as provided for in Business and Professions Code § 26050:
 - 1. Type 10 = Retailer (medical).
 - 2. Type 11 = Distributor (medical).
- B. The requirements provided by above subsection (A) apply to any similar activities authorized under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of retail (medical), distribution (medical), or similar operations (including non-profit, collective or cooperative operations).

Sec. 5.50.060 - Commercial cannabis operation permit.

- A. Prior to initiating operation as a commercial cannabis operation and as a continuing requisite to conducting operations, the owner of a commercial cannabis operation shall obtain a regulatory permit from the City under the terms and conditions set forth in this chapter.
- B. Issuance of a Commercial Cannabis Operation Permit is governed by a three-step procedure (as provided for in more detail in Sections 5.50.080 and 5.50.090).
 - 1. The first step (as provided for in Section 5.50.080) is a review by the Director to determine whether an applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit, such minimum qualifications being the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination, then the application will be deemed compliant, and eligible for review by the Cannabis Permit Committee as to whether the permit should issue.
 - 2. The second step (as provided for in Section 5.50.090) is a review by the Cannabis Permit Committee of the thoroughness of applicant's adherence to Merit List criteria specified in Section 5.50.090(C). Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate in writing reasons for the recommendation and refer to Merit List criteria.

3. The third step (as provided for in Section 50.50.90) is review by City Manager of Cannabis Permit Committee recommendations, and then a decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to Merit List criteria specified in Section 5.50.090(C). The decision shall be final and non-appealable.
- C. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless provided for otherwise.
- D. Conditions necessary for the continuing validity of a Commercial Cannabis Operation Permit include:
1. Strict adherence to each and every requirement of this chapter, as well as any requirements, including administrative regulations, adopted by the City pursuant to the authority of this chapter.
 2. Maintaining a current and valid state license under Section 26200 of the Business and Professions Code, and as amended. Revocation, suspension or expiration of the state license shall automatically invalidate the equivalent City Commercial Cannabis Operation Permit.
 3. Allowing Operations Officers to conduct reasonable inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with local and state law.
 4. Maintaining with the City current and valid contact information of the owner(s) and manager(s) of the commercial cannabis operation.
 5. Maintaining with the City current and valid contact information of a legal representative of the commercial cannabis operation.
 6. Transferable only if transferee successfully completes all of the requirements that a new applicant for a Commercial Cannabis Operation Permit would otherwise need to meet.

Sec. 5.50.070 - Applications for commercial cannabis operation permit.

- A. The owner of a proposed commercial cannabis operation shall file an application with the Director upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council, as may be amended from time to time. Applications will be accepted beginning on July 1, 2018.
- B. An application for a Commercial Cannabis Operation Permit shall include, but not be limited to, the following information:
1. Business.
 - a. Activities. A general description of the proposed operation, including how the proposed operation will operate in compliance with this Code and state law, plans for handling cash and transporting cannabis and

cannabis products to and from the premises, and the proposed use of all areas on the premises, including but not limited to specific activities, storage, lighting and signage.

- b. Security. A security plan detailing measures to the satisfaction of the Director that all applicable security-related requirements under State or local law, including but not limited to the requirements of Section 550.110(B), are and will be met.
- c. Development Agreement. Applicants seeking to enter into a development agreement with the City pursuant to Government Code sections 65864, *et seq.*, are encouraged to propose terms and conditions, including but not limited to applicant benefits, public outreach and education, community service, and payment of fees and other charges as mutually agreed.
- d. Odor Control. An odor control plan detailing odor control measures in accordance with Section 550.110(C), to the satisfaction of the Director.
- e. Ownership. A description of the statutory entity or business form that will serve as the legal structure for the applicant, the ownership structure of the applicant as filed with the California Secretary of State (e.g. limited liability company, joint partnership, S-Corporation) (an applicant that is a foreign corporation shall include in its application the certificate of qualification issued by the Secretary of State of California), and a copy of the entity's 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.
- f. Seller's Permit. The seller's permit number issued by the Board of Equalization or evidence that the applicant has applied for a seller's permit from the Board of Equalization, as applicable.
- g. Other Licenses and Permits. Identification of any other licenses or permits for commercial cannabis operations, whether for the City of Morro Bay or for any other licensing or permitting authority:
 - i. held currently by the applicant;
 - ii. pending approval for the applicant; or
 - iii. denied to, revoked from or suspended for the applicant.
- h. Physical. A general description of the proposed operation, including the street address, parcel number, the total square footage of the site, and the characteristics of the surrounding area.
- i. Floor plan. A scaled floor plan for each level of each building that is part of the business site, including the entrances, exits, walls, and

operating areas. The floor plan must be professionally prepared by a licensed civil engineer or architect.

- j. Site plan. A scaled site plan of the business site, that will include at a minimum all buildings, structures, driveways, parking lots, landscape areas, and boundaries. The site plan must be professionally prepared by a licensed civil engineer or architect.
- k. Hours of Operation. Proposed hours and days of operation.

2. Individuals.

- a. Managers. The name, address, e-mail and phone number of any person who is managing or responsible for the commercial cannabis operation's activities.
- b. Community Outreach Manager. The name, e-mail and phone number of an employee designated as Community Outreach Manager, who will be responsible for outreach and communication with the surrounding community, including the neighborhood and nearby businesses.
- c. Employees. A list of the names of all current and prospective employees of the commercial cannabis operation, along with any other identifying information requested by the Director.
- d. Consent to Criminal Investigation. Written consent from all employees to fingerprinting and a criminal background investigation by the City, upon a form provided by the City, accompanied with payment of appropriate fees to City to cover the costs of performing such criminal background check. At the discretion of the City and in compliance with State law, the City may use live scan to perform criminal background checks.
- e. Identification. For each employee, a color photocopy of either a valid California Driver's License or equivalent identification approved by the Director.
- f. Land Owner. The name, address, e-mail and phone number of the owner and lessor of the real property upon which the commercial cannabis operation is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a notarized acknowledgement from the owner of the property that a commercial cannabis operation will be operated on his/her property.

3. Miscellaneous.

- a. Any additional application requirements specific to the type of Commercial Cannabis Operation Permit being sought, including but not limited to as provided for by this chapter.
- b. Evidence satisfactory to the Director of compliance with all local and

state law requirements governing commercial cannabis operations.

- c. Evidence satisfactory to the Director of compliance with all applicable insurance requirements as provided for by this chapter, local law and state law. Minimum insurance levels shall be determined by the Director after an assessment of the risks posed by the commercial cannabis operation, including provision for meeting the requirements of Section 5.50.080(D)(2).
- d. Authorization for the Director to seek verification of the information contained within the application.
- e. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
- f. Any such additional and further information as is deemed necessary by the Director to administer this chapter.

Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.

- A. Upon receipt of a completed application and payment of all applicable fees, the Director shall investigate the information contained in the application to determine whether the applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit. These minimum qualifications are the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination then the application will be deemed compliant and eligible for review as to whether the permit should issue pursuant to the provisions in Section 5.50.090.
- B. If the Director determines that the application is incomplete, the Director shall notify the applicant in writing explaining the reasons thereof within sixty (60) days of receipt of the application. Applicant shall have 30 days to submit a completed application, in accordance with the Director's notification. If the application is resubmitted as incomplete, it shall be deemed abandoned. The applicant may then resubmit a new application for a new review pursuant to the requirements of this section.
- C. Within ninety (90) days of receipt of the completed application, the Director shall complete the investigation, approve, conditionally approve, or deny the application as being in compliance with the requirements of this chapter, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
- D. An applicant shall not be deemed compliant for purposes of review under Section 5.50.090, until and unless an applicant meets all of the following requirements:
 - 1. Provides written authorization to the Operations Officers to conduct reasonable unannounced inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with this chapter and all laws of the City and the State of California.
 - 2. Executes an agreement: to indemnify, defend and hold harmless (at the

Commercial Cannabis Operation Permit holder's sole expense, the ability to do so demonstrated through proof of sufficient insurance coverage to the satisfaction of the City) the City, its elected officials, employees, agents, officers, and representatives, and each and all of them individually, from all liability or harm arising from or in connection with all claims, damages, attorney's fees, costs and allegations arising from or in any way related to the operation of the commercial cannabis operation; and, to reimburse the City for any costs and attorney's fees that the City may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action.

- E. Upon successfully completing the review process, the permit application shall be deemed compliant and eligible for review under Section 5.50.090, unless the Director finds:
 - 1. The applicant has made one or more false or misleading statements or omissions, either on the written application or during the application process; or
 - 2. A proposed location for the commercial cannabis operation is not allowed by state or local law, statute, ordinance, or regulation (including this Code); or
 - 3. The applicant has not satisfied each and every requirement of this chapter and Code; or
 - 4. The applicant is not in compliance with applicable state law, including, but not limited to, applicable requirements and minimum standards of the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and any applicable State regulations.
- F. Based on the information set forth in the application and the Director's review, the Director may impose, as a condition of being deemed compliant and thereby eligible for review under Section 5.50.090, reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. At the Director's sole discretion, the time limits in this Section may be extended upon written notification from the Director to the applicant.

Sec. 5.50.090 - Issuance of commercial cannabis operation permit.

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine that it is in the best interests of the health, safety and welfare of the residents and visitors of the City of Morro Bay that no Commercial Cannabis Operation Permits are to be granted by the City.
- B. Upon determination by the Director that an applicant is compliant with the requirements of this chapter, the Morro Bay City Code, and applicable state law (and thereby eligible for review by the Cannabis Permit Committee to determine whether or not a City of Morro Bay Commercial Cannabis Operation Permit will be issued), the Director shall promptly prepare for the application a written Merit List for provision to the Cannabis Permit Committee.
- C. A Merit List shall detail and rank in writing the thoroughness of an applicant's adherence

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to the following criteria, as they relate to the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay:

1. Operation plan for the business, including attention to community concerns about the impact of the business.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.
 11. Requirements of this chapter, this Code and applicable State law.
 12. Any additional criteria the Director determines is of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- D. The Cannabis Permit Committee shall determine in writing, within a reasonable amount of time after receipt from the Director of the Merit List, whether to recommend to the City Manager that the requested Commercial Cannabis Operation Permit shall be issued. The recommendation shall use the criteria contained within Section 5.50.090(C).
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the Cannabis Permit Committee) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
 2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the Cannabis Permit Committee to further the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.
 3. Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate reasons in writing for the recommendation and refer to Merit List criteria.
- E. The City Manager shall make a final determination in writing, within a reasonable amount of time after receipt from the Cannabis Permit Committee of a recommendation, whether the applicant shall be issued a Commercial Cannabis Operation Permit.
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the City Manager) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
 2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the City Manager to further

the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.

3. Notice of the written determination shall be provided promptly to the applicant upon final determination. The determination shall articulate reasons in writing for the final determination and refer to Merit List criteria. The determination shall be final and not appealable.
- F. The City Manager may impose reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. As determined appropriate by the City, multiple qualified applications for Commercial Cannabis Operation Permits may be considered at the same time, for reasons including but not limited to comparison of applicants for limited permits using the criteria contained within Section 5.50.090(C). The permit process timelines provided by this chapter may be modified by the City to facilitate such review of multiple applications.

Sec 5.50.100 - Renewal of commercial cannabis operation permit.

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine through the procedures provided in this chapter that for reasons of the health, safety and welfare of the residents and visitors of the City of Morro Bay that a Commercial Cannabis Operation Permit will not be renewed.
- B. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless specifically provided for otherwise by this chapter.
- C. The following procedures shall govern the process for the renewal of a Commercial Cannabis Operation Permit:
 1. A holder of a Commercial Cannabis Operation Permit may apply for the renewal of an existing permit no less than 60 days prior to the permit's expiration date upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.
 2. Renewal applications shall comply with all of the requirements in this chapter for applying for a new Commercial Cannabis Operation Permit. At the discretion of the City, renewal applications may consist of updating any changes to an original application or previous renewal application.
 3. The Director will review permit renewal applications and make a determination as to whether the commercial cannabis operation has remained in compliance with all the requirements of this chapter and State law during the prior term of the permit. If the Director makes a contrary determination, the application for a permit renewal shall be denied.
 4. If the Director determines the commercial cannabis operation has remained in compliance with all the requirements of this chapter and state law during the prior

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term of the permit, the permit renewal application shall then be subject to the requirements of Section 5.50.090 (including the attendant preparation of a Merit List applicable to the prior term's operations), and the Director shall provide to the Cannabis Permit Committee a written Merit List. The Cannabis Permit Committee shall then recommend to the City Manager in writing whether the permit should be renewed. The City Manager shall review the recommendation and then make a final decision on whether to grant an application for a permit renewal. The decision shall be final and non-appealable.

5. If the holder of a Commercial Cannabis Operation Permit files a renewal application less than 60 days prior to expiration, the holder must provide a written explanation detailing the circumstances surrounding the late filing. The Director may deny the untimely application after review of the explanation. If the Director accepts the application, then the Director may elect to administratively extend the permit beyond the expiration date while the Director completes the renewal permitting process. Untimely applications for renewal which are nevertheless accepted by the Director pursuant to this section are subject to a late penalty.

- D. A Commercial Cannabis Operation Permit is immediately invalid upon expiration if the permit holder has not filed a timely and/or accepted renewal application and remitted all of the required renewal fees. In the event the permit is not renewed prior to expiration, the affected commercial cannabis operation shall cease operation upon the expiration of the permit and is thereafter considered to be unlawful.

Sec. 5.50.110 - General operating standards and restrictions.

A commercial cannabis operation shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions on the permit for a commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. State Standards. All state requirements and regulations that govern the operation of a commercial cannabis operation, including but not limited to ones related specifically to certain types of commercial cannabis operations, shall apply as minimum requirements and regulations and requirements for commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.

B. Security.

1. General. All cannabis, cannabis products and cash present or kept at the premises shall be securely stored against both unauthorized access as well as theft.
2. Security Cameras.
 - a. Security cameras shall be installed and maintained in good condition, with at least 30 days of digitally recorded documentation in a format approved by the Director and the Police Chief.

- b. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present at the site of the commercial cannabis operation.
 - c. The cameras shall be in continuous use 24 hours per day, 7 days per week.
 - d. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium approved by the Director, such as DVD and/or a USB drive.
 - e. The areas to be covered by the security cameras include, but are not limited to, the storage areas, operation areas, all doors and windows, the parking lot, all exterior sides of the property adjacent to the public rights of way, and any other areas as determined by the Director and Police Chief.
 - f. Remote log-in information will be provided to the Operations Officers to allow them to view live and recorded security camera images remotely at any time.
3. Alarm System. The location of the commercial cannabis operation shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code section 7590, *et seq.* and whose agents are properly licensed and registered under applicable law.
 4. Locked Entrances. All entrances into the building housing a commercial cannabis operation shall be locked from the exterior at all times with entry controlled by employees.
 5. Windows. All windows on the building that houses the commercial cannabis operation shall be secured against entry from the outside.
 6. No employee shall refuse, impede, obstruct or interfere with an inspection conducted pursuant to the authorizations provided by this chapter.

C. Odors.

1. A commercial cannabis operation shall have an air treatment system that ensures off-site odors shall not result from its activities.
2. This requirement at a minimum means that the commercial cannabis operation shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location of the commercial cannabis operation is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the commercial cannabis operation, if the use only occupies a portion of a building.

D. Authorizations.

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1. The Operations Officers shall have the right to enter all areas of the commercial cannabis operation from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.
2. Recordings made by security cameras required pursuant to this chapter shall be made available to the Operations Officers upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

E. Records.

1. Commercial cannabis operations shall maintain on-site the following records either in paper or electronic form:
 - a. The full name, address, and telephone numbers of the owner and lessee of the property.
 - b. The name, date of birth, address, and telephone number of each employee of the commercial cannabis operation; the date each was hired; and the nature of each employee's participation in the commercial cannabis operation.
 - c. Copies of all required state licenses.
 - d. An inventory record documenting the dates and amounts of cannabis and cannabis products received at the site, the daily amounts of cannabis and cannabis products on the site, and the daily amounts of cannabis and cannabis products leaving the site for any reason, including but not limited to being sold, delivered, or distributed.
 - e. A written accounting of all expenditures, costs, revenues and profits of the commercial cannabis operation, including but not limited to cash and in-kind transactions.
 - f. A copy of all insurance policies related to the operation of the commercial cannabis operation.
 - g. A copy of the commercial cannabis operation's most recent year's financial statement and tax return.
 - h. Proof of a valid and current permit issued by the City in accordance with this chapter, and the equivalent State of California license to operate the commercial cannabis operation. Every commercial cannabis operation shall display at all times during business hours the City permit issued pursuant to the provisions of this chapter, and the equivalent State license, in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.
2. All records required to be maintained by the commercial cannabis operation must be maintained for no less than three (3) years and are subject to immediate inspection (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law) upon a lawful written request by an

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Operation Officer.

3. A commercial cannabis operation shall report any loss, damage, or destruction of these records to the Operation Officers within twenty-four (24) hours of the loss, damage, or destruction.

F. Site Management.

1. Commercial cannabis operations shall not result in a nuisance or adversely affect the health, welfare, or safety of nearby persons by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste. The permittee shall promptly and diligently both prevent as well as eliminate conditions on the site of the commercial cannabis operation that constitute a nuisance.
2. The Commercial Cannabis Operation permittee shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.
3. The Commercial Cannabis Operation 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.
4. Notwithstanding any provisions of this code to the contrary, the Commercial Cannabis Operation permittee shall remove all graffiti from the site and parking lots under the control of the Commercial Cannabis Operation Permittee within 72 hours of its application.

G. State Board of Equalization Seller's Permit Required.

1. Commercial cannabis operations must obtain a Seller's Permit from the State Board of Equalization as applicable.
2. Such permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.

H. Employees.

1. All employees must submit to fingerprinting and criminal background checks by the City.
 - a. No employee convicted within the last ten years of a felony substantially related to the qualifications, functions or duties of an employee of a commercial cannabis operation (such as a felony conviction for distribution of controlled substances, money laundering, racketeering, etc.) shall be employed by a commercial cannabis operation, unless such employee has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.
 - b. At the request of the commercial cannabis operation, the Director and Police Chief shall determine the applicability of this section to a potential

employee within a reasonable period of time after a written request has been made to the Director and Police Chief for such determination.

2. All employees must possess a valid government issued (or equivalent) form of identification containing an identifying photograph of the employee, the name of the employee, the date of birth of the employee, and the residential address of the employee. Color copies of such identification shall be maintained at the location of the commercial cannabis operation. A valid California Driver's license will satisfy this requirement.

I. Cannabis Transfer Between Permitted Operations Only.

A commercial cannabis operation shall not transfer cannabis or cannabis products to or from another commercial cannabis operation, unless both operations are in possession of all required state and local licenses and permits.

J. Commercial Cannabis Operation Signage.

1. Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Morro Bay Municipal Code.
2. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements within the applicable zoning district.

K. Prohibited Personal Activities.

1. Cannabis Use. No person shall smoke, ingest, or otherwise consume cannabis in any form on, or within 20 feet of, the site of the commercial cannabis operation.
2. Alcohol Use. No person shall possess, consume, or store any alcoholic beverage on the site of the commercial cannabis operation.

L. No Minors. No minor shall be an employee of, or participate in, a commercial cannabis operation in any capacity, including but not limited to, as a manager, employee, contractor, adviser, or volunteer.

M. Exterior Lighting. The exterior of the premises upon which the commercial cannabis operation is operated shall be equipped with and, at all times between sunset and sunrise, shall remain illuminated with fixtures of sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas.

N. Building Design. A Commercial Cannabis Operation permittee must maintain the design of the buildings on the site in accordance with the plans that are approved by the City pursuant to this chapter and otherwise approved by the City. No permittee shall modify the buildings on the site contrary to the approved plans, without the approval of the Director.

O. Nuisance. The Commercial Cannabis Operation permittee shall take all reasonable steps

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to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the members of the subject commercial cannabis operation.

1. "Reasonable steps" shall include immediately calling the police upon observation of the activity, and requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.
 2. "Nuisance" includes but is not limited to disturbances of peace, open public consumption of cannabis, alcohol or controlled substances, excessive pedestrian or vehicular traffic, including the formation of any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.
- P. Upon and after receiving possession of a Commercial Cannabis Operation Permit as provided for in this chapter, the Commercial Cannabis Operation Permit holder shall:
1. Immediately update the Director in writing upon the change in status of any of the information previously submitted to the City concerning the commercial cannabis operation, including but not limited to when there is any change in the address, email, phone number, or other identifying information, previously provided to the City in compliance with this chapter, for any owner, manager, community outreach manager, property owner, or legal representative of the commercial cannabis operation.
 2. Maintain continuing compliance with criminal background check requirements of this chapter by ensuring that:
 - a. upon the hiring, association or retention of an employee by the commercial cannabis operation, the requirements of Section 5.50.070(B)(2)(d) are immediately met for such employee by provision of appropriate documentation to the Director; and
 - b. the Director and Police Chief are immediately informed in writing of any felony conviction as described in Section 5.50.110(H)(1)(a) for any current employee.
 3. Maintain continuing compliance with all applicable insurance requirements, including, but not limited to, those imposed by City and this chapter.
- Q. Exemption. The regulations contained in this chapter shall not apply to a commercial cannabis operation engaged in the following uses, as long as such use complies strictly with applicable law, including this Code, regulating such use and the location of such use, including, but not limited to, Sections 11362.5, *et seq.* of the Health and Safety: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and, a residential hospice or a home health agency licensed pursuant to

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Sec. 5.50.120 - Retail (medical) operating standards and restrictions.

A commercial cannabis operation engaged in retail (medical) shall operate in conformance with both the General Operating Standards and Restrictions provided for in Section 5.50.110, as well as the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a retail (medical) commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in retail (medical) without both a current and valid City Commercial Cannabis Operation Permit issued for retail (medical) as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern retail (medical) operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for retail (medical) commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.
- C. Location Restrictions.
 - 1. No retail (medical) operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2) district, or the light industrial (M-1) district.
 - 2. No retail (medical) operation shall locate within six hundred (600) feet of a school, day care center, youth center, park, or religious institution. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
 - 3. No retail (medical) operation shall locate within one hundred (100) feet from another retail (medical) operation. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
- D. Number of Permits. No more than two permits shall be active and valid in the City at any one time. In the event less than two permits are active and valid in the City, in its sole discretion the City may accept permit applications pursuant to the provisions of this chapter.
- E. Renewal of Permits. Subject to the requirements of Section 5.50.100, the City in its sole discretion may elect to extend the term, of one of the two permits initially issued (or thereafter, to achieve staggered review of permit renewal applications), so that each year

thereafter the City shall only review one request for a permit renewal.

- F. Customers. Retail (medical) operations shall only sell, dispense, or provide cannabis or cannabis products to a qualified patient with a written physician's recommendation, a person with an identification card, or a primary caregiver with written documentation attesting to lawful status as a primary caregiver.
- G. Opaque Packaging. All cannabis or cannabis products sold to a customer shall be prohibited from leaving the site unless placed in opaque packaging which conceals the nature of the product from human vision.
- H. Dispensing and Storage Areas. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of employees.
- I. Edibles.
 - 1. All edible cannabis products available for sale must be clearly labeled as medical cannabis.
 - 2. No edible cannabis products shall be available for sale which are appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.
 - 3. All edible cannabis products shall be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary.
 - 4. All edibles cannabis products for sale shall be marked with a universal symbol, as determined by the State Department of Public Health through regulation, pursuant to Section 26130(c)(7) of the Business and Professions Code.
- J. Interior Lighting. The premises within which the commercial cannabis operation is operated shall be equipped with and, at all times during which is open to the public, shall remain illuminated with overhead lighting fixtures of sufficient intensity to illuminate every place to which members of the public or portions thereof are permitted access with an illumination of not less than two foot-candles as measured at the floor level.
- K. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:
 - 1. "Minors are prohibited from entering this site unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian."
 - 2. "Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited."
- L. No Recommendations On-site. Retail (medical) operations shall not have a physician or any other person at the location of the commercial cannabis operation to evaluate patients, or provide a recommendation or physician's recommendation, for the use of

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medical cannabis.

- M. Sanitation. The permittee shall establish and implement written procedures that maintain the highest industry standards of sanitation and cleanliness for the operation so as to ensure cannabis and cannabis products sold to the public are free of harmful contaminants.
- N. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees.
- O. Prohibited Activities. No cannabis cultivation, testing or manufacturing shall occur at the location of the retail (medical) operation.
- P. No Alcohol. Retail (medical) operations shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- Q. No Lounge or Cafe. Retail (medical) operations shall not operate as a lounge, cafe or restaurant serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of members.
- R. Age Restriction. Minors are prohibited from entering the location of the retail (medical) operation unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian.
- S. Public Information. The permittee shall make available to customers a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible medical cannabis etiquette.

Sec. 5.50.130 - Wholesale distribution (medical) operating standards and restrictions.

A commercial cannabis operation engaged in distribution shall operate in conformance with both the General Operating Standards and Restrictions for all Commercial Cannabis Operations provided for in Section 5.50.110, as well as with the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a distribution commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in distribution without both a current and valid City Commercial Cannabis Operation Permit issued for distribution as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern distribution operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for

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distribution commercial cannabis operations within the City of Morro Bay, in addition the requirements and regulations of this chapter and this Code.

C. Location Restrictions.

1. No distribution operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2) district, or the light industrial (M-1) district.
2. No distribution operation shall locate within six hundred (600) feet of a school, day care center, youth center, park, or religious institution. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.

D. Distribution Restrictions.

1. Distribution operations shall distribute cannabis and cannabis products only between licensed cannabis commercial operations.
2. Distribution operations shall not conduct retail sales of cannabis or cannabis products.
3. Distribution operations shall not distribute any cannabis or cannabis products to retail operations unless such cannabis or cannabis products has been properly tested and approved for retail sale pursuant to State law.
4. Upon demand by any Operation Officer a distributor shall make immediately available copies of any required shipping manifests as understood by Section 26070(f) of the Business and Professions Code.

E. Site Requirements. The site shall comply with the following requirements:

1. Visibility. Neither cannabis nor cannabis products shall 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.
2. Main Entrance and Lobby. The 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 distribution commercial cannabis operation areas. Members of the general public shall not be allowed in the distribution commercial cannabis operation areas except for reasons of lawful business.
3. Secure Product. All cannabis and cannabis products at the site shall be kept in a secured manner at all times.
4. Transport Area. Each building with a storage area shall have an area designed for the secure transfer of cannabis from vehicles to the storage area.
5. Storage Area. Each building shall have adequate storage space for cannabis. The storage areas shall be separated from the main entrance and lobby, and shall be

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secured by a lock accessible only to employees of the permittee.

- F. Sanitation. The permittee shall establish and implement written procedures that maintain the highest industry standards of sanitation and cleanliness for the operation so as to ensure the distribution of cannabis and cannabis products free of harmful contaminants.
- G. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees engaged in distribution operations.
- H. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:
 - 1. "This site is not open to the public."
 - 2. "Retail sales of any goods and services is prohibited"
 - 3. "Minors are prohibited from entering this site."
 - 4. "Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited."
- I. Prohibited Activities.
 - 1. No cannabis cultivation, manufacturing or testing shall occur at the site.
 - 2. No retail sales of cannabis or cannabis products shall occur at the site.
- J. Restricted Access.
 - 1. The site shall be closed to the general public.
 - 2. Minors are prohibited from entering the location of the site.

Sec. 5.50.140 - Delivery (medical) operating standards and restrictions.

- A. Deliveries Allowed.
 - 1. Medical cannabis deliveries are allowed in the City subject to the requirements of this chapter and compliance with applicable state law.
 - 2. Adult-use (recreational) cannabis deliveries in the City are prohibited.
- B. Licenses and Permits. Deliveries of cannabis and cannabis products shall only occur within the City by a commercial cannabis operation properly licensed or permitted to engage in cannabis deliveries by both the State of California as well as the originating jurisdiction of the delivery.
- C. Documentation Required for Deliveries.
 - 1. During deliveries the person making the actual delivery shall maintain at all times

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on his or her person a physical copy of the delivery request being fulfilled, a government-issued identification of the delivery person with a photograph, a copy of the State license which authorizes the delivery activity, and any other license or permit required by the originating jurisdiction to engage in the delivery of cannabis or cannabis products

2. Upon request made by any Operations Officer or law enforcement officer the person shall make these documents immediately available for review.
- D. Business License. Commercial cannabis operations that conduct deliveries of cannabis or cannabis products to customers located in the City, regardless of the originating jurisdiction of the delivery, are required to have a valid and current City business license to engage in such commercial activity.

Sec. 5.50.150 - Administration.

Further rules, regulations, procedures and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance from the City Council, by the Director (upon authorization by resolution from the City Council), or as further provided by this chapter.

Sec. 5.50.160 - Fees.

An application fee set by resolution of the City Council shall be required for formal processing of every application made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon commercial cannabis operations.

Sec. 5.50.170 - Suspension and revocation.

- A. The Director is authorized to suspend and/or revoke a Commercial Cannabis Operation Permit issued pursuant to this chapter upon the determination through written findings of a failure to comply with any provision of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter.
- B. The Director may suspend or revoke a Commercial Cannabis Operation Permit if any of the following occur, and the suspension or revocation shall be final:
 1. The Director determines that the commercial cannabis operation has failed to comply with any aspect of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter; or
 2. The equivalent State license has been suspended or revoked by the State of California; or
 3. Operations cease for more than 180 calendar days (including during any change of ownership, if applicable); or
 4. Ownership is changed without securing a new Commercial Cannabis Operation Permit; or

5. The commercial cannabis operation fails to maintain required security camera recordings; or
 6. The commercial cannabis operation fails to allow inspection of the security recordings, the activity logs, the records, or of the site by Operations Officers pursuant to this chapter.
- C. Conditions (if any) of suspension or revocation are at the discretion of the Director and may include, but are not limited to, a prohibition on all owners, operators, managers and employees of the suspended or revoked commercial cannabis operation from operating within the City for a period of time set forth in writing and/or a requirement (when operations may resume, if at all, pursuant to the Director’s determination) for the holder of the suspended or revoked permit to resubmit an application for a Commercial Cannabis Operation Permit pursuant to the requirements of this chapter.

Sec. 5.50.180 - Violations and penalties; public nuisance.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code, except for as preempted by state law; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Public nuisance abatement.
1. Any commercial cannabis operation that is conducted in violation of any provision of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code.
 2. All costs to abate such public nuisance, including attorneys’ fees and court costs, shall be paid by the person causing the nuisance, including the commercial cannabis operation permittee and the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

Sec. 5.50.190 - Service of notices.

Any notice required by this chapter is deemed issued and served upon the earliest date that either: the notice is deposited in the United States mail, postage pre-paid, addressed to the most recent mailing address provided to the City pursuant to the requirements of this chapter; or, the date upon which personal service of the notice is provided to a responsible party.

Sec. 5.50.200 - Prohibitions.

- A. Any commercial cannabis operation in violation of The Adult Use of Marijuana Act, The

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Medicinal and Adult-Use of Cannabis Regulation and Safety Act, this chapter, or any other applicable State law is expressly prohibited.

- B. It is unlawful for any commercial cannabis operation in the City, or any agent, employee or representative of such commercial cannabis operation, to permit any breach of peace or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct at the site of the commercial cannabis operation.

Sec. 5.50.210 - Nonconforming use.

No use which purports to have engaged in a commercial cannabis activity of any nature prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

Sec. 5.50.220 - Severability.

If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Morro Bay hereby declare that they would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4, CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 OF THE MORRO BAY CITY CODE IS HEREBY AMENDED AS FOLLOWS:

1. Section 9.24.020 (“Definitions”) shall have the following terms and definitions added:
 - “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.
 - “Electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
2. The definitions for the following terms in Section 9.24.020 (“Definitions”) are hereby amended to read in their entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

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- “Secondhand smoke” means smoke that is generated *either* from the burning end of a lighted tobacco, weed, *cannabis* or plant product, *or from an electronic smoking device*; or, smoke that is exhaled by a smoker, after inhaling or ingesting a lit tobacco, weed, *cannabis* or plant product, *or after use of an electronic smoking device*.
- "Smoke or smoking" means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, *cannabis*, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment, *including an electronic smoking device, used* for burning any tobacco product, weed, plant, *cannabis*, or any other combustible substance.

3. Section 9.24.030 (“Secondhand smoke generally.”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.030 - Secondhand smoke generally.

- A. For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Title 8 of the Morro Bay Municipal Code.
- B. For all purposes within the jurisdiction of the city, no person shall cause secondhand smoke to unreasonably interfere with the reasonable use and enjoyment of another person’s private residence.”***

4. Section 9.24.060 (“Places where smoking may be permitted”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.060 - Places where smoking may be permitted.

Except where prohibited by *local*, state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

- A. Private residential and multifamily properties. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated unenclosed areas (“smokers' outposts”) provided that all of the following conditions are met:
 1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
 2. The area has a clearly marked perimeter;
 3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated outdoor smoking area pursuant to Section 9.24.060 of this

code;

4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
 5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
 6. No consistent complaints of secondhand smoke are filed with the city.
- C. Smoking areas at public events which have been approved as part of the special event permit or temporary use permit issued by the city.
- D. Inside a private automobile when no minor child is present, *except for as prohibited by State law.*
- ~~E. Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.”~~
5. Section 9.24.120 (“Enforcement and penalties”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.120 – Enforcement and penalties.

- A. *Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code. ~~A violation of this section is an infraction.~~*
- B. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- C. *Any violation of this chapter shall be deemed a public nuisance which may be abated in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code. All costs to abate such public nuisance, including attorneys’ fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.*
- E. *The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.*
- F. *Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.”*

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this

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ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 6. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to both the exemption provided by Section 26055(h) of the Business and Professions Code as well as Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

SECTION 7. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 8. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED AND ADOPTED on the ___ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney