

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BURLINGAME DELETING SECTION 25.58.060 OF TITLE 25 OF THE BURLINGAME MUNICIPAL CODE (ZONING) AND CREATING CHAPTER 25.75 TO REGULATE CANNABIS CULTIVATION AND TO ESTABLISH LAND USE STANDARDS INCLUDING ZONING RESTRICTIONS APPLICABLE TO COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF BURLINGAME**

**WHEREAS**, on October 9, 2015, Governor Brown approved the Medical Marijuana and Regulation and Safety Act (“MMRSA”), effective January 1, 2016, which established a comprehensive state licensing and regulatory framework for the cultivation, manufacturing, testing, distribution, transportation, dispensing, and delivery of medical cannabis and which recognized the authority of local jurisdictions to prohibit or impose additional restrictions on any such medical cannabis activities; and

**WHEREAS**, on June 27, 2016, Governor Brown approved Senate Bill 837 which amended the MMRSA and renamed it the Medical Cannabis Regulation and Safety Act (“MCRSA”); and

**WHEREAS**, on November 8, 2016, the voters of the State of California (“State”) enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”); and

**WHEREAS**, on April 4, 2017, Governor Brown released a budget trailer bill that aimed to reconcile the existing medical marijuana statutory framework under MCRSA and the recreational statutory framework adopted under the AUMA. After some revision, the state Senate and Assembly passed a modified version of the original proposal in the form of AB 110/SB 94, known as the Medical and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), and on June 27, 2017 and the Governor signed it into law; and

**WHEREAS**, MAUCRSA uses the term “cannabis” instead of “marijuana”; and

**WHEREAS**, subject to certain exceptions, MAUCRSA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of cannabis, including cannabis products, and to tax the commercial growth and retail sale of cannabis; and

**WHEREAS**, MAUCRSA permits a city to enact and enforce “reasonable regulations” to regulate the possession, planting, cultivation, harvesting, drying, or processing of cannabis plants, including the complete prohibition of such activities outdoors; and

**WHEREAS**, the MAUCRSA creates a licensing system whereby the state will issue licenses to businesses authorizing them to cultivate, distribute, transport, store,

manufacture, process, and sell cannabis and cannabis products, with such licenses to be issued by January 1, 2018; and

**WHEREAS**, the MAUCRSA mandates that state licensing authorities shall not approve an application for a state license if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with the requirements of MAUCRSA; and

**WHEREAS**, the MAUCRSA states that nothing in it shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA, including completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA in the local jurisdiction; and

**WHEREAS**, on November 16, 2017, California’s three state cannabis licensing authorities – the Department of Food and Agriculture’s CalCannabis Cultivation licensing program, the Department of Consumer Affairs’ Bureau of Cannabis Control, and the Department of Public Health’s Manufactured Cannabis Safety Branch – released draft emergency regulations that will allow the state to begin issuing temporary licenses for growers, distributors, and sellers on January 1, 2018, when recreational sales become legal; and

**WHEREAS**, on September 17, 2018, the City Council adopted an Ordinance amending Chapter 25.58 of the Burlingame Municipal Code to add regulations regarding cannabis (marijuana) to allow for the indoor cultivation of up to six cannabis plants but otherwise prohibit commercial cannabis activities; and

**WHEREAS**, the City Council desires to permit commercial cannabis retail delivery operations within the boundaries of the city, create a local application process for the issuance of permits for those uses, and to prohibit all other commercial cannabis activities; and

**WHEREAS**, on October 5, 2020 the City Council directed staff to proceed with an evaluation and potential modification of Chapter 25.58 of the Burlingame Municipal Code to allow cannabis retail delivery businesses; and

**WHEREAS**, after review, Staff felt it would be more efficient and effective to create a new Chapter in the Zoning Code which explicitly regulates cannabis activity within the City; and

**WHEREAS**, to permit and prohibit the above-described uses, the City prepared a Zoning Amendment (“Amendment”) to the City’s zoning ordinance contained in Title 25 of the City’s Municipal Code (“Zoning Ordinance”), which would delete Section 25.58.060 of the Zoning Code and create a new Chapter 25.75, which will regulate cannabis cultivation and commercial cannabis activities; and

**WHEREAS**, as a result of this change, it is also necessary to amend Chapters 25.43 and 25.44 of the Zoning Ordinance, which regulate conditional uses of two land use districts within the City; and

**WHEREAS**, the Amendment is not subject to the California Environmental Quality Act (“CEQA”) because the activity will not result in a direct or reasonably foreseeable indirect physical change in environment pursuant to Section 15060(c)(2) of the CEQA Guidelines.

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

**Section 1.** The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

**Section 2.** The City Council hereby finds that the proposed Ordinance is in the public interest.

**Section 3.** The proposed Ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

**Section 4.** If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of Burlingame hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 5.** Section 25.58.060 of the Zoning Code is deleted in its entirety, and Chapter 25.75 is created with the language provided in Exhibit A, attached hereto and incorporated herein by reference.

**Section 6.** Sections 25.43.030 and 25.44.030 of the Zoning Code are amended as reflected in Exhibit B, attached hereto and incorporated herein by reference. Exhibit B generally shows additions with underlined text and deletions with ~~strike-out text~~.

**Section 7.** This Ordinance shall go into effect 30 days following its adoption.

**Section 8.** The City Clerk is directed to publish this ordinance in a manner required by law.

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on 1<sup>st</sup> day of February 2021 and adopted thereafter at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_ by the following votes:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

ATTEST:

\_\_\_\_\_  
Meaghan Hassel - Shearer, City Clerk

## EXHIBIT A

### 25.75 Regulations for Cannabis (Marijuana)

#### Sections

<b>25.75.010</b>	<b>Purpose</b>
<b>25.75.020</b>	<b>Applicability</b>
<b>25.75.030</b>	<b>Definitions</b>
<b>25.75.040</b>	<b>Prohibited Activities</b>
<b>25.75.050</b>	<b>Non-Storefront Cannabis Retail Delivery</b>
<b>25.75.060</b>	<b>Operator Permit Requirements</b>
<b>25.75.070</b>	<b>Commercial Cannabis Operation Security Requirements</b>
<b>25.75.080</b>	<b>Indoor Cultivation of Up to Six Living Cannabis Plants for Personal Use Permitted</b>
<b>25.75.090</b>	<b>Public Nuisance</b>
<b>25.75.100</b>	<b>Administrative Procedures</b>
<b>25.75.110</b>	<b>Conflict of Laws</b>

#### **25.75.010 Purpose – Regulations of Cannabis (Marijuana).**

This Article establishes regulations governing cultivation, possession, manufacture, distribution, processing, storing, labeling, or sale of cannabis (commonly known as “marijuana”) and cannabis products, whether for medicinal or adult use. The City finds it necessary to establish such regulations in the interest of the public health, safety, and welfare to regulate all cannabis-related activities.

#### **25.75.020 Applicability.**

This Article shall apply to the establishment of all land uses related to cannabis, cannabis products, and commercial cannabis activity, whether for medicinal or adult use.

#### **25.75.030 Definitions.**

For the purposes of this Article, the following words and phrases shall have the following meanings:

A. “Cannabis” (also known as “marijuana”) means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated 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” shall not include industrial hemp, as defined in Health and Safety Code section 11018.5.

B. “Cannabis Product” means cannabis that has undergone a process whereby the

plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

- C. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, labeling, or sale of cannabis and cannabis products for commercial purposes, whether for profit or nonprofit, and for which a state license is required under Business and Professions Code sections 26000 et seq. Commercial cannabis activity shall not include delivery of cannabis and cannabis products as “delivery” is defined in state law.
- D. “Commercial cannabis business” means a business engaged in sales, distribution, retail delivery, or warehousing of cannabis or cannabis products.
- E. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- F. “Fixed location non-storefront cannabis retail delivery” means a non-storefront cannabis retail delivery business, as defined in this Section, which has a commercial address from which the business conducts its operations. The fixed location is typically a warehouse structure, or “depot,” which stores cannabis inventory until an order is received.
- G. “Fully enclosed and secure structure” means a code-compliant space within a building or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, and which is accessible only through one or more locking doors.
- H. “Indoor” means within a fully enclosed and secure structure as defined herein.
- I. “Non-storefront cannabis retail delivery” means a business or operation, whether for profit or nonprofit, whose premises are closed to the public and which sells cannabis and/or cannabis products exclusively by delivery, for which a state license (Type 9-Non-storefront Retailer) is required under Business and Professions Code sections 26000 and following. This definition does not include any storefront component whereby customers purchase the products at the physical premises of the retail establishment.
- J. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

#### **25.75.040 Prohibited Activities**

To the fullest extent permitted by law, all personal and commercial cannabis activities and commercial cannabis businesses are prohibited in all zoning districts, except as explicitly

permitted in this Chapter.

This chapter acknowledges that commercial cannabis activity is illegal under federal law, while granting limited immunity from local prosecution to those medical and nonmedical cannabis activities that do not violate the restrictions and limitations set forth in this Chapter or California law.

### **25.75.050 Non-Storefront Cannabis Retail Delivery**

Non-storefront cannabis retail delivery is permitted in the City of Burlingame subject to the following requirements:

#### **A. Zones Where Permitted.**

1. **Delivery Permitted.** Commercial delivery of cannabis to a fixed address within City limits is permitted throughout the City except at the following locations: schools, day care centers, youth centers, public parks and open space, public buildings, and eating or drinking establishments. All deliveries must be to a fixed address.
2. **Fixed Location Non-storefront Cannabis Retail Delivery Permitted.** Fixed locations for non-storefront cannabis retail delivery businesses are prohibited everywhere in the City except in the Innovation Industrial (I/I) land use district (Rollins Road (RR) and Inner Bayshore (IB) Zoning Districts).

B. **Conditional Use Permit Required.** Fixed locations for non-storefront cannabis retail delivery businesses are only permitted in the zoning districts specified above with a conditional use permit approved by Planning Commission.

C. **Distance Requirements.** Fixed locations for non-storefront cannabis retail delivery businesses shall be sited a minimum of 600 feet from residential uses, schools, day care centers and youth centers.

#### **D. Operational Standards.**

1. **Operator Permits.** All non-storefront cannabis retail delivery operations must obtain and maintain a valid operator permit issued by the City pursuant to Section 25.75.060.
2. **Compliance with Law.** All non-storefront cannabis retail delivery activities must be conducted in accordance with all applicable State laws and regulations, as may be amended from time to time, and all applicable local laws and regulations.
3. **Visibility.** All cannabis, cannabis products, and any aspect of the delivery of cannabis that indicates the type of product(s) being delivered shall not be visible from the public right-of-way, exterior of a structure, and/or vehicle(s) where those

commercial cannabis activities take place.

4. All fixed location non-storefront cannabis retail delivery operations must comply with the provisions of a fire safety plan ensuring compliance with all applicable Fire Code and Building Code requirements prepared by a third-party engineer and approved by the City.
5. **Security in Vehicle.**
  - a. All cannabis and cannabis products shall be stored in a lockbox that is permanently secured to the vehicle during transport.
  - b. All delivery vehicles shall include video and audio monitoring equipment that retains recordings for 30 days, has date and time stamped recordings, and video overlays that indicate which vehicle the recording is from.
  - c. All delivery vehicles must be plainly marked and not include any overt or obvious indications of the products being distributed.
6. **Security at Fixed Location Non-Storefront Cannabis Retail Delivery Business Locations.** All fixed locations for non-storefront cannabis retail delivery businesses within the City must implement and maintain a security plan and surveillance system that complies with the requirements outlined in Section 25.75.070 herein.
7. **In-Transit Requirements.**
  - a. Delivery vehicles may only travel between the delivery business locations and drop-off destinations while transporting cannabis and/or cannabis products.
  - b. Deliveries are only permitted during the hours specified under State law and/or regulations.
  - c. Only operators and/or employees of operators may be present in the delivery vehicle while transporting cannabis or cannabis products.
  - d. All drivers shall carry valid identification and proof of employment at a permitted delivery facility.
  - d. All drivers shall carry an inventory log of cannabis and cannabis products being transported.
8. **Vehicle Registration with Burlingame Police Department.** All delivery vehicles must be registered with the Burlingame Police Department.
9. **Recordkeeping Requirements.** Operators shall keep the following records:



- a. All delivery vehicle maintenance records.
- b. All delivery vehicle ownership records.
- c. All shipping manifests for completed and in-transit deliveries
- d. A contemporaneous inventory log.
- e. Delivery log including location, time and delivery driver.
- f. Quality-assurance details for all cannabis and cannabis products stored and/or delivered by operator, destruction or loss of any cannabis and/or cannabis products.

E. **Operating Agreement.** The City shall require delivery-only operations to enter into an operating agreement with the City, pursuant to Section 25.75.060 herein.

### **25.75.060 Operator Permit Requirements**

A. **Operator Permit Required.** No person shall engage in commercial cannabis activity or operate a commercial cannabis business pursuant to this section without possessing a valid operator permit from the City and without possessing all other approvals or licenses that may be required pursuant to State law and regulations.

- 1. Additional permits or entitlements may be required depending on construction or improvements necessary for a building or site.
- 2. Regardless of the number of sites zoned for commercial cannabis operations in the City, the total number of commercial cannabis operator permits granted for each State license type may be established or limited by City Council Resolution.
- 3. The City may refuse to issue any discretionary or ministerial permit, license, variance or other entitlement, which is sought pursuant to this section, including zoning clearance for a building permit, where the property upon which the use or structure is proposed is in violation of the Burlingame Municipal Code, or any other local, State or Federal law.
- 4. No property interest, vested right, or entitlement to receive a future permit to operate a commercial cannabis use shall ever inure to the benefit of such operator permit holder, as such permits are revocable. Operator permits issued pursuant to this section are specific to the operator, do not run with the land and are not transferable.

**B. Permit Types.** Prior to engaging in any commercial cannabis business, individuals must obtain an operator permit from the City corresponding to the category of activity or enterprise. The following permit types are available in the City:

1. **Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit** (Address Within Permitted Land Use District in City)

2. **Cannabis Delivery Only Operator Permit** (Commercial Cannabis Business Delivering to City Address)

a. This permit shall only be issued to retail operations holding a valid license or permit for retail sale of cannabis issued by the State of California and by the local jurisdiction where the retail operation is located.

**C. Operator/Permit Holder Qualifications.** All operator permit holders must meet the following minimum qualifications. The City reserves the right to require additional qualifications through the operator permit application procedures.

1. Operator permit holders and all employees and agents of said commercial cannabis business must be 21 years of age or older.

2. Operator permit holders and all employees and agents of said commercial cannabis business shall be subject to a background check by the California Department of Justice and local law enforcement.

3. Operator permits for commercial cannabis uses shall not be issued to any operators who have been convicted of a violent felony or any operators that have employees or agents that have been convicted of a violent felony. In addition, permits for commercial cannabis uses shall not be issued to operators (or operators that have employees or agents) who have been convicted of crimes (whether felony or misdemeanor) that involve crimes of moral turpitude.

4. Operator permit holders must meet the minimum qualifications established by this chapter and by the State for the applicable State license type.

**D. Operator Permit Application.** All applicants must submit applications to the Community Development Director. Any confidential information submitted by applicants pursuant to this Section shall be marked as such. Confidential information submitted to the City may be withheld from public disclosure in accordance with applicable law. Applications shall include, at a minimum, the following:

1. **Business Operators' Information.** All necessary information related to the business operator, including names, birth dates, addresses, social security numbers, relevant criminal history, relevant work history, names of businesses owned or operated by the applicant within the last 10 years, investor and/or partner

information, and Assessor Parcel Number (APN) number of the parcel upon which the business will be located. Such private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety.

2. **Payment of Application Fee.** Applicants shall submit the application fee amount with their applications.
3. **Business License.** Each applicant shall submit proof that either the City has issued the applicant a business license or proof that the applicant has submitted a City business license application.
4. **Signed Indemnity Provision.** To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the City. To the maximum extent permitted by law, operators shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Burlingame, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, costs, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, prosecutions for violations of State or Federal law, or judgments (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") caused, in whole or in part, by operator's operation of a commercial cannabis business in the City or associated with any action against the City to attack, set aside, void or annul, any cannabis-related approvals and/or determinations. The City may elect, in its sole discretion, to participate in the defense of said action, and the operator shall reimburse the City for its reasonable legal costs and attorneys' fees. Operators shall be required to agree to the above obligations in writing and submit said writing as part of the operator permit application.

**Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit Applications Also Require:**

5. **Property Owner Permission** Written (and notarized) permission from the property owner and/or landlord to operate a commercial cannabis use on the site.
6. **Employee Roster.** Each application shall submit an employee roster with the names and birth dates of each proposed employee of the operation with a signed authorization from each such employee authorizing the City to conduct a background check.
7. **Operating Plan.** Each application shall submit a detailed operating plan identifying the features of the proposed business.
8. **Security Plan** as required under Section 25.75.070.

9. **Site Plans.** Each application shall submit a detailed site plan identifying the layout and configuration of the proposed operation, as well as any proposed improvements to the site.
10. **Proof of Notice.** Applicants must provide notice to properties and property owners within 300 feet of the boundaries of the property upon which the commercial cannabis business is proposed at least 15 days prior to submission of an application for a permit and must include proof of such notice with the operator permit application.
11. **Hazardous Materials.** To the extent that the applicant intends to use any hazardous materials in its operations, the applicant shall provide a hazardous materials management plan that complies with all Federal, State, and local requirements for management of such substances. "Hazardous materials" includes any hazardous substance regulated by any Federal, State, or local laws or regulations intended to protect human health or the environment from exposure to such substances.
12. **Signed Affidavit.** The property owner and applicant, if other than the property owner, shall sign the application and shall include affidavits agreeing to abide by and conform to the conditions of the permit and all provisions of the Burlingame pertaining to the establishment and operation of the commercial cannabis use, including, but not limited to, the provisions of this section. The affidavit(s) shall acknowledge that the approval of the operator permit shall, in no way, permit any activity contrary to the Burlingame Municipal Code, or any activity which is in violation of any applicable laws.

**E. Permit Issuance, Validity, Rejection of Application, Revocation, Suspension, Renewal and Transfer.**

1. **Cannabis Operator Permit Issuance.** Cannabis operator permits shall require approval of Community Development Director or designee. Permit applicants must meet all operator and application requirements to be considered for permit issuance.
  - a. Cannabis operator permits shall be valid for one year from the date of issuance.
  - b. The City shall not issue any cannabis operator permit until the necessary State license(s) is obtained.
  - c. No Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit may be issued until the applicant obtains a conditional use permit from the Planning Commission.

- d. No cannabis operator permit shall be issued until the operator has paid all required fees and applicable local and state taxes. Cannabis operator permit fees shall be set by resolution of the City Council.
2. **Operator Permit Issuance Procedure.** The Community Development Director, or designee, may design application forms and procedures specific to each permitted license type and require inspections of proposed facilities before issuing a permit under this chapter.
- a. Applications shall be reviewed by City staff, as designated by the Community Development Director for completeness, sufficiency, and consistency with minimum qualifications. Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit applicants failing to meet minimum qualifications or application requirements will not be permitted to seek a conditional use permit from the Planning Commission.
  - b. Relevant City staff will engage in an inspection of the site and/or delivery vehicles to ensure compliance with the requirements of this chapter.
  - c. If staff determines that a Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit applicant meets the minimum qualifications and the application complies with all of the requirements outlined in subsection D of this section and other applicable provisions of this chapter, said operator permit application will be granted pre-clearance and the applicant will be authorized to seek a conditional use permit from the Planning Commission. The applicant must seek a conditional use permit within one year from the date pre-clearance is issued. If an applicant has not sought a conditional use permit within the one-year period, the applicant's pre-clearance status will expire and a new application will have to be submitted in order to seek a conditional use permit. The Community Development Director may, in his or her sole discretion, extend an applicant's pre-clearance status if the Community Development Director determines that there is a reasonable basis for the delay and the information contained in the initial application is still accurate.
  - d. If a pre-cleared applicant successfully obtains a conditional use permit from the Planning Commission, the applicant will be issued an operator permit. If a pre-cleared applicant fails to obtain a conditional use permit, the City will not issue that applicant an operator permit.
3. **Rejection of Applications/Revocation or Suspension of Operator Permit.** The Community Development Director, or designee, has the authority and discretion to reject, suspend or revoke any application or permit. Applicants providing false or misleading information in the permitting process will result in rejection of the application and/or nullification or revocation of any issued permit. Grounds for rejection of application or suspension/revocation of permit, include, but are not

limited to:

- a. Providing incomplete, late, or unresponsive applications.
- b. Making false or misleading statements to the City.
- c. Any owner, employee, or agent having been convicted of a violent felony or crime of moral turpitude.
- d. Any owner has had a cannabis-related license or approval revoked from another jurisdiction.
- e. Failure to comply with any provisions of this chapter, the Zoning Code, State law, or any other applicable laws or regulations.
- f. Unpaid fees, fines, or administrative penalties.
- g. Facts or circumstances exist which indicate that the operation does or would very likely constitute a threat to public health, safety and/or welfare.
- h. Failure to obtain the necessary planning approvals or revocation of said planning approval in accordance with this chapter and the Zoning Code.
- i. The operation as proposed would violate any provision of State or local laws or regulations.
- j. Failure to implement and maintain a Security Plan in conformance with Section 25.75.070.
- k. Failure to implement and maintain a Fire Safety Plan in conformance with this chapter.
- l. The applicant has engaged in unlawful, fraudulent, unfair or deceptive business acts or practices.
- m. The applicant's State license for commercial cannabis operations is suspended or revoked. The City shall not reinstate the permit until documentation is received showing that the State license has been reinstated or reissued. It shall be up to the City's discretion whether the City reinstates any permit.
- n. State law permitting the use for which the permit was issued is amended or repealed resulting in the prohibition of such use, or the City receives credible information that the Federal government will commence enforcement measures against such businesses and/or local governments that permit them.

4. **Renewal.** Operators must renew operator permits each year to continue operating in the City. The Community Development Director shall have the authority and discretion to design renewal application procedures. Any renewal application shall require a site and/or vehicle inspection and submission of all of the information specified in subsection D of this section and approval of said application in accordance with the provisions of this chapter.
  5. **Transfer.** Operator permits are personal to the operator and are nontransferable. In the event that an operator sells, disposes of or otherwise conveys a cannabis business in the City, the purchaser or successor-in-interest shall obtain a new operator permit from the City prior to commencing operations. Purchasers and/or successors-in-interest are not required to obtain new conditional use permits for existing cannabis businesses provided that the transfer of the business occurs during the five-year term of the conditional use permit.
- F. Operating Agreement.** The City shall require an operating agreement as a condition of receiving an operator's permit. Such operating agreement shall set forth the terms and conditions under which the commercial cannabis activity will operate, that are in addition to the requirements of the Burlingame Municipal Code. The terms and conditions may include, but are not limited to, the payment of fees, charges, and contributions as mutually agreed, and any such other terms which promote the public health, safety, and welfare and mitigate negative impacts of such use.
- G. Appeals.** Applicants/operators may appeal the denial, suspension or revocation of a cannabis operator permit by filing a written notice of appeal with the City Manager or designee within 10 days after receipt of a denial or order of suspension or revocation from the Community Development Director. The City Manager or designee shall hold a hearing within 30 days of receiving the request for appeal where the applicant and the City may present evidence regarding the denial, suspension or revocation of the permit. The City Manager or designee shall render his or her decision in writing on the appeal within 45 days after the date of the hearing. Said decision shall be final and no appeal may be taken to the City Council.

#### **25.75.070 Commercial Cannabis Operation Security Requirements**

- A. Approval of Security/Surveillance Plan.** All applicants for a Fixed Location Non-Storefront Cannabis Retail Delivery Business Operator Permit must submit a security plan demonstrating compliance with the provisions of this section. Prior to the issuance of any permit, the Chief of Police, or designee, must approve the security plan. Said plan must, in the Chief's determination, demonstrate the applicant's ability to operate a safe operation that does not encourage criminal activity and prevents the theft or diversion of cannabis.
- B. Mandatory Elements of the Security Plan.** To be eligible for approval, the security plan must provide for all of the following components:

1. **Robbery Alarm System.** Installation and maintenance of a central station silent robbery alarm system that is hidden from plain view, but easily accessible to authorized personnel. Alarm systems shall be installed and maintained in compliance with the Burlingame Municipal Code.
2. **Burglary Alarm System.** Installation and maintenance of a central station silent intrusion alarm system. The silent intrusion alarm system shall include contact sensors covering each entrance/exit, each skylight, as well as interior motion sensors. Alarm systems shall be installed and maintained in compliance with the Burlingame Municipal Code.
3. **Security Guards.** Employment of at least one uniformed security guard present during normal business hours to include one-half hour before and after normal business hours. The security guard shall be charged with preventing violations of the law, reporting suspicious persons, vehicles, circumstances and all criminal offenses to the Police Department. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of the State law. The sole purpose of the security guard shall be to provide for the protection and safety of the business and its authorized personnel and said guard shall not be required to perform additional, nonsecurity related duties within the business. The Chief of Police reserves the right to review the number of guards and may require that the number of guards be increased or decreased as necessary.
4. **Recordkeeping/Product Tracking.** Implementation of a recordkeeping/product tracking system to ensure that all cannabis is accounted for and any loss or theft is easily discoverable in accordance with State law. These records shall be kept for at least one year.
5. **Employee Roster.** Operator must keep a current and updated employee roster on-file with the Police Department with the names and addresses of all Operator's employees.
6. **Video Surveillance System.** Installation of a video surveillance system meeting the following criteria:
  - a. Cameras that record at a resolution of 1280 x 720 or higher;
  - b. Cameras that record in accurate color with a surveillance monitor that displays in accurate color;
  - c. Sufficient storage capacity to retain data from all cameras for a period of 30 days;



- d. An on-site monitor no smaller than 15 diagonal inches for viewing of images;
  - e. The ability to view and record footage at the same time;
  - f. Accurate time and date stamps on recorded video images;
  - g. Locked and secure location of system to prevent destruction or tampering from customers or employees. Access to the system shall be restricted to management;
  - h. Cameras with clear and unobstructed view of the desired coverage areas;
  - i. A dedicated and secured power source to prevent intentional or accidental deactivation; and
  - j. Separate cameras dedicated to each processing area, loading or shipping area, each entrance/exit of the business, and the parking lot. The cameras shall be placed in locations that allow a clear, unobstructed view of the desired locations and shall be periodically evaluated to ensure compliance. Enough cameras shall be placed at each location to cover the entirety of the intended area to be captured.
7. **Prohibition on External Signage.** The business shall not display any external signage or other visual clues as to the nature of the business, including, but not limited to, green lights, depictions of marijuana leaves, "420," or other common terms or symbols associated with cannabis.
  8. **Prohibition of On-Site Sales/Public Access.** No access by the general public may occur. No on-site sales to any customers may occur.
  9. **Prohibition on Delivery Vehicle Signage.** No pickup or delivery vehicles may contain or depict any signage or other visual clues as to the nature of the business, including, but not limited to, green lights, depictions of marijuana leaves, "420," or other common terms or symbols associated with cannabis.
  10. **Prohibition on Cannabis in Plain View.** All cannabis, cannabis products, and any aspect of the commercial cannabis operation that indicates the type of product(s) inside shall not be visible from the public right-of-way, exterior of the structure, and/or vehicle(s) where those commercial cannabis activities take place.
  11. **Prohibition on Advertising Business Address.** The business shall not identify the business address in any communications, advertisements and marketing, as required under Chapter 15 of Division 10 of the California Business and Professions Code. The business may only display the business name and license number.

12. **Unauthorized Access.** All entrances to the building shall remain locked at all times to prevent unauthorized access from the exterior. The business shall utilize an electronic card key system to allow access for authorized personnel. The system shall record and log all entries/exits from the premises and such records must be retained for one year by the system.
13. **Security of Loading/Shipping Areas.** Loading/shipping areas shall have a double security door design that securely isolates the loading/shipping area from the main warehouse/processing area of the building when pickups or deliveries are made.
14. **Drop Safes.** Each cannabis business shall install, maintain, and use a time delay drop safe to store cash and limit the risk of robbery. Time delayed drop safes shall be rated at UL TL-15 or higher.
15. **Odor Control System.** The business shall install, maintain, and use an odor control system to prevent cannabis odors from escaping and being detected within 10 feet outside the building.
16. **Implementation and On-Going Compliance.** All businesses must implement and maintain the security systems and equipment required by this chapter in strict accordance with the approved security plan prior to commencing operations. If a business subject to this chapter does not meet or maintain the security standards required by this chapter, the business must take immediate steps to bring the security requirements into conformance with the provisions of this chapter. Failure to comply with the requirements of an approved security plan is grounds for revocation of a permit and cessation of operations.

#### **25.75.080 Indoor Cultivation of Up to Six Living Cannabis Plants for Personal Use Permitted**

Indoor cultivation of no more than six living cannabis plants for personal use is permitted in all zoning districts. No more than six living cannabis plants may be possessed, planted, cultivated, harvested, dried, or processed within a private residence at any one time, including within an accessory structure to a private residence that is fully enclosed and secure. The plants shall not be visible from a public place. Persons engaging in indoor cultivation must comply with state and local laws, including all applicable building, electrical fire, and water codes and regulations.

#### **25.75.090 Public Nuisance.**

The establishment, maintenance or operation of a cannabis retail establishment, manufacturing facility, testing facility, distribution facility, delivery-only operation, indoor commercial cultivation operation, outdoor cultivation of cannabis or any other commercial cannabis activity in violation of or in non-compliance with any of the requirements of this

chapter or applicable provisions of State law or the Burlingame Municipal Code, is declared a public nuisance and, in addition to or in lieu of prosecuting a criminal action, shall be subject to any enforcement or abatement remedies available under the law and/or the City's Municipal Code. In addition, the City may enforce the violation of this chapter by means of civil enforcement through a restraining order, a preliminary or permanent injunction or by any other means authorized by the law.

#### **25.75.100 Administrative Procedures**

The City Manager may adopt reasonable administrative procedures necessary to implement this chapter.

#### **26.75.110 Conflict of Laws**

In the event that any provision of this chapter is in conflict with State law or regulations, as may be amended from time to time, said State law or regulation shall control to the extent that said State law or regulation preempts local regulations. In the event of such preemption, all remaining portions of this ordinance shall remain valid and enforceable.

## EXHIBIT B

### Chapter 25.43 INNER BAYSHORE DISTRICT (IB)

#### 25.43.030 Conditional Uses

The following are conditional uses requiring a conditional use permit:

- (a) Any use with a structure that:
  - (1) Exceeds the maximum floor area ratio set forth in Section 25.43.020, or
  - (2) Exceeds the development density standards for that use established in the Inner Bayshore subarea of the Bayfront Specific Plan, unless otherwise prohibited by this chapter, or
  - (3) Does not comply with a measurable standard of the design guidelines for that use established in the Inner Bayshore subarea of the Bayfront Specific Plan, unless otherwise prohibited by this chapter;
- (b) Any light industrial or manufacturing use such as electronic, furniture, biotechnology, drug, pharmaceutical and printing conducted wholly within a completely enclosed building, including associated laboratories, which exceeds any of the performance criteria of Section 25.43.020(b).
- (c) Automobile rental businesses which meet the following minimum standards:
  - (1) The use is the sole tenant and only occupant of the lot, and
  - (2) The lot is at least seven-tenths (0.7) of an acre, and
  - (3) Parking is provided on-site for storage of at least twenty-five (25) percent of the cars rented monthly, based on an annual average for the site, and
  - (4) Parking is provided on-site for all employees and customers, and
  - (5) The use meets all the other requirements of development in the district, including peak hour trip generation at critical intersections as defined in the traffic analyzer and Specific Area Plan for the Bayfront Anza areas;
- (d) Technical schools with training directly related to permitted or conditional uses in the Inner Bayshore area, with parking as required by chapter 25.70;
- (e) Convention and exhibition facilities;
- (f) Incidental food establishment uses that are not the primary use of a building and do not meet the other criteria of Section 25.43.020;
- (g) Outdoor storage of materials incidental to permitted uses which storage exceeds ten (10) percent of the gross lot area and contractors storage yards; any such use shall be limited to side and rear yards, shall be paved, and shall be enclosed by an opaque fence or wall eight (8) feet in height;
- (h) Structures over thirty-five (35) feet in height;

(i) Any use similar in nature to one which is permitted or for which a permit is required in this district at a density determined not to exceed the trip generation for the planned use of the lot using the adopted Bayfront traffic analyzer.

(j) Drive-in services or takeout services associated with permitted and conditional uses.

(k) Non-storefront cannabis retail delivery, per Chapter 25.75.

## **Chapter 25.44 ROLLINS ROAD (RR) DISTRICT REGULATIONS**

### **25.44.030 Conditional Uses**

The following are uses requiring a conditional use permit:

- (a) Industrial uses with a floor area ratio not to exceed 1.0;
- (b) Air courier, delivery, or other transshipment services, including trucking which do not meet the requirements for permitted uses.
- (c) Automobile rental businesses, including rental of recreation vehicles and trucks, which meet the following minimum standards:
  - (1) The use is the sole tenant and only occupant of any building or area on the site;
  - (2) The site is a minimum size of seven-tenths (0.7) of an acre;
  - (3) Parking is provided on-site for storage of at least twenty-five (25) percent of the cars rented monthly, based on an annual average for the site;
  - (4) Parking is provided on-site for all employees and customers; and
  - (5) The use meets all the other requirements of development in the district, including peak hour trip generation at critical intersections as defined in the city's traffic analyzer.
- (d) Automobile dealerships that are wholly enclosed within a warehouse structure with no outdoor vehicle display areas;
- (e) Automobile storage for car rental businesses provided the following requirements are met:
  - (1) Vehicles shall not be moved during a.m. and p.m. peak hour traffic periods as defined by the city engineer; and
  - (2) Minimum site size of seven-tenths (0.7) of an acre; and
  - (3) The storage area is enclosed with an opaque fence or wall eight (8) feet in height at a location approved by the public works department.
- (f) Building materials and garden supply stores, which:
  - (1) Have no more than one hundred thousand (100,000) square feet of indoor floor area, outdoor storage display, and sales areas combined; and
  - (2) Have paved, on-site parking based on retail sales requirements of Chapter 25.70 of this code and for all indoor and outdoor retail sales areas, adequate area on-site for

maneuvering, parking, and unloading of trucks, and employees who will be on-site at one time.

(g) Technical schools with training related to the permitted and conditional uses in the Rollins Road district with parking as required by Chapter 25.70.

(h) Commercial recreation, including health clubs and gymnasiums, with on-site parking.

(i) Health services and medical clinics whose primary function is to support businesses in the RR district.

(j) Food establishments in multiuse buildings which do not meet the requirements of Section 25.44.020(e) of this chapter.

(k) Motor freight terminals whose site development meets the following requirements:

(1) Provide on-site parking for all company vehicles dispatched from the site and for vehicles of employees working on the premises; and

(2) Provide adequate on-site space for loading and unloading goods, equipment and materials.

(l) Office uses limited to supporting only a permitted or conditional uses on the same site and that exceed twenty-five (25) percent of the gross floor area of buildings on a lot, but only where parking is available on-site to code requirements.

(m) Outdoor storage of rental or leased equipment which is a primary use of a lot located in the RR district between Easton Creek and Broadway, and which meets the requirements of Section 25.44.065 of this chapter.

(n) Outdoor storage or treatment of materials which is not an accessory use to a permitted use, but which meets the requirements of Section 25.44.065 of this chapter.

(o) Retail sales and display areas as an accessory use to a permitted or conditional use, interior to a building only, if the retail use will:

(1) Operate beyond the hours of 6:00 a.m. to 9:00 p.m.; or

(2) Sell alcoholic beverages in containers.

Any such conditional use shall be conditioned on the retail use conforming to all of the other requirements for retail sales and display areas of Section 25.44.020 of this chapter.

(p) Veterinary hospitals where:

(1) All animal care activity, including necessary exercise and educational programs, is contained within a structure; and

(2) The business is operated by a licensed veterinarian and all sanitary standards established by the state and all local requirements as approved by the city engineer are met on the site; and

(3) The noise level is not increased at property line by more than 5 dBA L<sub>10</sub>; and

(4) The business is conducted in such a manner so as to preclude any nuisance, hazard, or commonly recognized offensive and obnoxious conditions or characteristics from odors detectable at the property line or off the site.

(q) Animal shelter or animal rescue centers where:

(1) All animal care activity, including necessary exercise and educational programs, is contained within a structure, except for aviaries which may be exterior to the structure, but which shall be fully enclosed with mesh as commonly used in zoos; and

(2) Animal care is overseen by a licensed veterinarian and all sanitary standards established by the state and all local requirements as approved by the city engineer, are met on the site; and

(3) The noise level is not increased at property line by more than 5 dBA L<sub>10</sub>; and

(4) No animal is kept on the site longer than allowed in the conditions of approval, unless there is a specific medical need for longer term care, and the maximum density established by the conditions of approval is maintained; and

(5) An attendant is present on the site twenty-four (24) hours a day; and

(6) All activity on the site is conducted in such a manner so as to preclude any nuisance, hazard, or commonly recognized offensive and obnoxious conditions or characteristics from odors detectable at the property line or off the site.

(r) Living quarters in association with a permitted or conditional use, but only to be used by a night watchman or to provide security for the site.

(s) Structures over thirty-five (35) feet in height.

(t) Any structure or structures that cover more than sixty (60) percent of the lot.

(u) Accessory uses which are necessary for the conditional uses under this section.

(v) Retail sales as an accessory use to a warehouse use wholly enclosed within a structure for specialty providers with a single product line for the construction industry, such as but not limited to plumbing fixtures, tile outlets, paint stores.

(w) Accessory uses related to a permitted use which requires outdoor treatment or processing of materials shall meet the following additional requirements:

(1) Is adequately screened from view from the street with an opaque eight (8) foot fence; and

(2) Is not located in the front yard of the property.

(x) Non-storefront cannabis retail delivery, per Chapter 25.75.

~~(y)~~ Any commercial or industrial use similar in nature to a permitted or conditional use in this or the Inner Bayshore (IB) district. (Ord. 1789 § 2, (2006))