

## **ORDINANCE 1531**

**AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, APPROVING A CATEGORICAL EXEMPTION FROM CEQA AND APPROVING ZONING ORDINANCE AMENDMENT 18-97503 TO AMEND TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO ADD A NEW CHAPTER 17.54, "CANNABIS RETAILER CONDITIONAL USE PERMITS" TO ALLOW CANNABIS RETAILERS IN THE HIGHWAY SERVING COMMERCIAL ZONE WITH APPROVAL OF A CANNABIS CONDITIONAL USE PERMIT, AND MAKING THE ALLOWANCE FOR, AND REGULATION OF, THESE BUSINESSES CONTINGENT UPON THE VOTER'S APPROVAL OF A TAX MEASURE (MEASURE O) ON THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION BALLOT**

WHEREAS, on October 9, 2015 Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State regulatory and licensing scheme for commercial medical cannabis businesses; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA made it lawful under State and local law for persons 21 years of age or older to possess and cultivate limited quantities of cannabis for personal use. The AUMA also established a State regulatory and licensing scheme for commercial adult-use cannabis businesses; and

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more businesses licensed by the State, within that local jurisdiction; and

WHEREAS, the City Council finds that unregulated retail cannabis sales activity has the potential to adversely affect the public health and safety of Banning residents

and those engaged in retail cannabis activity. For example, on June 23, 2018, there was an armed robbery at an illegal cannabis dispensary in the City that resulted in the perpetrators shooting and stabbing five people who were at the dispensary. The City is aware that similar incidents have occurred at other cannabis dispensaries/retailers due primarily to the fact that these are often all-cash businesses, thus making them magnets for crime; and

WHEREAS, the City Council also finds that, if a retail cannabis business tax is adopted by the voters, that limited retail commercial cannabis sales activity may provide financial benefits to the City as long as they are sufficiently regulated by the City. The establishment of land use regulations for cannabis retailers will substantially reduce this threat to the public health and safety; and

WHEREAS, the City Council desires to establish reasonable zoning and land use regulations regarding the operation of cannabis retailers that are intended to address the potential negative impacts of unregulated cannabis businesses. These regulations include security measures to protect the employees and patrons of the cannabis retail business, as well as the public as a whole; and

WHEREAS, the regulations also include limiting the number of retailers to one for every 10,000 residents. This limitation will ensure that the City can closely monitor these businesses so that they do not create public health and safety risks to residents and visitors. Additionally, this limitation will ensure that an unnecessary strain is not placed on the City's already overtaxed law enforcement personnel. The limitation on the number of cannabis retailers is proportional to existing demand as evidenced by the number of illegal cannabis dispensaries that are currently operating in the City; and

WHEREAS, the City Council desires to establish zoning and land use regulations through this Ordinance for cannabis retailers that are companion elements to the City's adoption of cannabis business permit regulations and the voter's adoption of cannabis business taxes; and

WHEREAS, on October 3, 2018, the Planning Commission of the City of Banning held a public hearing regarding this Ordinance 1531, at which time all persons interested in the contents of this Ordinance had the opportunity and did address the Planning Commission on these matters specific to the establishment of zoning and land use regulations for retail cannabis sales facilities. Following the receipt of public testimony, the Planning Commission closed the public hearing. At the conclusion of the Planning Commission hearing, and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2018-18 recommending that the City Council adopt this Ordinance to allow cannabis retailers as a conditionally permitted use in the Highway Serving Commercial zone; and

WHEREAS, the City Council of the City of Banning held a public hearing on the proposed Ordinance 1531, at which time all persons interested in this Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony, the City Council closed the public hearing; and

WHEREAS, this Ordinance, Ordinance 1531, will only go into effect if the Banning voters approve a tax measure (Measure O) imposing taxes on these cannabis retailers at the November 6, 2018 municipal election; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. ENVIRONMENTAL FINDINGS**

**A. California Environmental Quality Act (CEQA)**

The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, the City is providing that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

**B. Multiple Species Habitat Conservation Plan (MSHCP)**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**SECTION 2. ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 18-97503.

**Finding No. 1:** Proposed Zone Text Amendment No. 18-97503 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97503 is consistent with the goals and policies of the General Plan. Commercial cannabis activities can adversely affect the health, safety and well-being of City residents. The unregulated retail sales of cannabis can also lead to an increase in the frequency of robberies and similar crimes. The concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. The Banning Municipal Code currently bans all retail cannabis uses within the City. It is in the public interest to regulate cannabis, to allow for responsible and lawful retail cannabis sales in the City. With adequate regulation and oversight limited commercial cannabis activity are consistent with the following General Plan goals and policies:

**Economic Development Element:**

Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 18-97503 is internally consistent with the Zoning Ordinance.



**Findings of Fact:** Proposed Zone Text Amendment No. 18-97503 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating retail cannabis sales so as to avoid the risks of criminal activity, malodorous smells, and degradation of the natural environment.

**Finding No. 3:** The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment No. 18-97503 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "...does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. As this Ordinance includes required CEQA compliance for individual conditional use permit applications for commercial cannabis businesses, the CEQA exemption applies to the adoption of this Ordinance.

### **SECTION 3.     ZONE TEXT AMENDMENT NO. 18-97503**

Title 17 (Zoning) of the Banning Municipal Code is amended as follows:

A. The alphabetized list of definitions provided for in Section 17.04.070 (Definitions) of Chapter 17.04 (Basic Provisions) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add the definition of "Cannabis Retailer" as follows:

**Cannabis Retailer** means a cannabis business that engages in the retail sale and delivery of cannabis or cannabis products to customers.

B. Table 17.08.020 of Section 17.08.020 (Permitted, conditional and prohibited uses.) of Chapter 17.08 (Residential Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add “Cannabis Retailer” to the table, with all other provisions of Table 17.08.020 remaining unchanged:

Zone	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Residential Uses									
<u>Cannabis Retailer</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

C. Table 17.12.020 (Permitted, conditional, and prohibited commercial and industrial uses.) of Section 17.12.020 (Permitted, conditional and prohibited uses) of Chapter 17.12 (Commercial and Industrial Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add “Cannabis Retailer” to the table with all other provisions of Table 17.12.020 remaining unchanged:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
<b>Resource and Open Space Uses</b>								
<u>Cannabis Retailer</u>	<u>X</u>	<u>X</u>	<u>C<sup>8</sup></u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

8. Cannabis Retailers shall require approval of a Cannabis Conditional Use Permit by the City Council, after recommendation by the Planning Commission, and shall be subject to the requirements of Chapter 17.54.

D. Table 17.12.050 (Use Specific Development Standards.) of Section 17.12.050 (Use specific standards) of Chapter 17.12 (Commercial and Industrial Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add “Cannabis Retailer” to the list of Use-Specific Development Standards:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
<u>Y. Cannabis Retailer</u>			* -					

Y. Cannabis Retailers shall require approval of a Cannabis Conditional Use Permit by the City Council, after recommendation by the Planning Commission, and shall be subject to the requirements of Chapter 17.54.

E. Table 17.16.020 (Permitted, conditional and prohibited public facilities uses.) of Section 17.16.020 (Permitted, conditional, and prohibited uses) of Chapter 17.16 (Public Facilities Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add "Cannabis Retailer" to the table, with all other provisions of Table 17.16.020 remaining unchanged:

Zone	PF-A	PF-G	PF-F	PF-S	PF-H
<u>Cannabis Retailer</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

F. Table 17.20.020 (Permitted, conditional and prohibited open space uses.) of Section 17.20.020 (Permitted, conditional and prohibited uses) of Chapter 17.20 (Open Space Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add "Cannabis Retailer" to the table, with all other provisions of Table 17.20.020 remaining unchanged:

Zone	OS-R	OS-PA	OS-PU	OS-H
<u>Cannabis Retailer</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

G. Chapter 17.54 (Cannabis Conditional Use Permits) is hereby added to Title 17 (Zoning) of the Banning Municipal Code to read as follows:

**"Chapter 17.54 Cannabis Retailer Conditional Use Permits"**

**Sections**

- 17.54.010 Definitions.
- 17.54.020 Cannabis Retailer Conditional Use Permit Required.
- 17.54.030 Cannabis Retailer Conditional Use Permit - Fees and Terms.
- 17.54.040 Cannabis Retailer Conditional Use Permit Application Requirements.
- 17.54.050 Additional Application Requirements.
- 17.54.060 Procedures and Findings for Approval of Cannabis Retailer Conditional Use Permit.
- 17.54.070 Approval of Cannabis Retailer Conditional Use Permit With Conditions.
- 17.54.080 Separation Requirements and Other Limitations.
- 17.54.090 Premises.
- 17.54.100 Personnel and Visitors.
- 17.54.110 Security.
- 17.54.120 Track and Trace.

- 17.54.130 Signage.
- 17.54.140 Cannabis Waste Management.
- 17.54.150 General Sanitary Requirements.
- 17.54.160 Odor Control.
- 17.54.170 Operating Requirements.
- 17.54.180 Other Provisions.
- 17.54.190 Indemnification.

**17.54.010 Definitions.**

For the purpose of this Chapter, the following words and phrases shall be defined as follows:

A. "Applicant" means an owner applying for a cannabis retailer conditional use permit pursuant to this Chapter.

B. "Bureau" means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

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. For the purpose of this Chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

D. "Cannabis business" means a cannabis retailer.

E. "Cannabis products" has the same meaning as in Section 11018.1 of the Health and Safety Code.

F. "Cannabis retailer" means a cannabis business that engages in the retail sale and delivery of cannabis or cannabis products to customers.

G. "City" means the City of Banning.

H. "City Manager" means the City Manager or his/her designee.

I. "Convicted" or "Conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted.



J. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a State license issued by a licensing authority.

K. “Financial interest” shall have the meaning set forth in Section 5004 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

L. “Licensing authority” means the Bureau of Cannabis Control; CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture (CDFA); the California Department of Public Health’s Manufactured Cannabis Safety Branch; or any other State cannabis licensing authority.

M. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

N. “Owner” means any of the following:

1. A person with any ownership interest, unless the interest is solely a security, lien, or encumbrance.

2. The chief executive officer of a nonprofit or other entity.

3. A member of the board of directors of a nonprofit.

4. An individual who will be participating in the direction, control, or management of the person applying for a permit. An owner who is an individual participating in the direction, control, or management of the commercial cannabis business includes any of the following:

a) A partner of a cannabis business that is organized as a partnership.

b) A member of a limited liability company of a cannabis business that is organized as a limited liability company.

c) An officer or director of a cannabis business that is organized as a corporation.

O. “Permit” means a cannabis retailer conditional use permit issued pursuant to this Chapter.

P. “Permittee” means any person holding a cannabis conditional use permit under this Chapter.

Q. “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver,

syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

R. "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant where the cannabis business will be conducted.

S. "Significant discrepancy" means a difference in actual inventory compared to records pertaining to inventory of at least one thousand dollars (\$1,000). For purposes of determining a discrepancy, the acquisition price of the cannabis goods shall be used to determine the value of cannabis goods in a permittee's inventory.

#### **17.54.020 Cannabis Retailer Conditional Use Permit Required.**

A. Except as expressly authorized pursuant to this Title (Title 17, Zoning), all commercial cannabis activity is prohibited in the City.

B. Prior to initiating operations and as a continuing requisite to operating a cannabis business, the person(s) wishing to operate a cannabis business shall:

1. Obtain and maintain a validly issued cannabis conditional use permit approved by the City Council after recommendation by the Planning Commission, and comply with all conditions of approval.

2. Obtain and maintain a State license to engage in the specific cannabis business being operated on the premises.

3. Obtain and maintain a cannabis retailer regulatory permit as required by Chapter 5.33 of this Code.

4. Obtain and maintain a business license or any other license or permit required by this Code.

#### **17.54.030 Cannabis Retailer Conditional Use Permit - Application Fees and Terms.**

A. No cannabis retailer conditional use permit application shall be processed unless the applicant pays the application fee deposit in the amount to be established by resolution of the City Council. No cannabis retailer conditional use permit shall be issued unless the applicant pays the nonrefundable permit fee in the amounts to be established by resolution of the City Council.

B. No cannabis retailer conditional use permit shall be issued if the applicant has an ownership or other direct financial interest in any other commercial cannabis business operating in the City.

#### **17.54.040 Cannabis Retailer Conditional Use Permit Application Requirements.**

An applicant shall file the following information with the City at the time of application for a cannabis retailer conditional use permit:

A. A completed cannabis retailer conditional use permit application, together with the application fee in an amount to be established by resolution of the City Council.

B. Proof of a cannabis regulatory permit jointly approved by the City Manager and Chief of Police. The owner(s) identified on the cannabis retailer conditional use permit application shall be same owner(s) as listed on the cannabis retailer regulatory permit issued pursuant to Chapter 5.33.

C. An operating plan for the proposed cannabis business that includes:

1. A general description of the types of products and/or services to be sold or provided by the cannabis business;

2. A site plan, drawn to scale and professionally prepared by a licensed civil engineer or architect, of the parcel of property on which the proposed cannabis business will be located. The site plan shall include the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel.

3. A floor plan, drawn to scale and professionally prepared by a licensed civil engineer or architect, designating all interior dimensions of the premises, the proposed use of all spaces, identification of limited access areas, areas of ingress and egress, and all security camera locations.

4. An evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, Title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect.

5. A business plan describing how the cannabis business will operate in accordance with the Banning Municipal Code, state law, and other applicable regulations. The business plan must include plans for cash handling and transportation of cannabis and cannabis products to and from the premises.

6. A list of all owners, employees, independent contractors, and volunteers.

D. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the premises, the boundaries of all other properties within 600 feet of the premises, and the uses of those properties, specifically including, but not

limited to, any use identified in Business and Professions Code section 26054(b), and any park. The map must also identify any residentially zoned parcel that is located within 200 feet of the premises. The map must be professionally prepared by a licensed civil engineer or architect.

E. Security plan. A detailed security plan outlining the measures that will be taken to ensure the safety of persons and property on the premises. The security plan must be prepared by a qualified professional.

F. Lighting Plan. A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

G. The name, phone number, and email address of an on-site community relations representative or staff member or other representative to whom the City can provide notice if there are operating problems associated with the cannabis business or refer members of the public who may have complaints or concerns regarding the cannabis business. This information shall be available to neighboring businesses and residences located within one hundred feet of the cannabis business, as measured in a straight line without regard to intervening structures.

#### **17.54.050 Additional Application Requirements.**

A. Each cannabis business shall obtain a separate conditional use permit.

B. The applicant shall submit proof that the applicant is, or will be, entitled to possession of the premises for which application is made.

C. The applicant shall submit proof of the nature of the cannabis business's organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation which may be required by the City.

#### **17.54.060 Procedures and Findings for Approval of Cannabis Retailer Conditional Use Permit.**

A. A cannabis retailer conditional use permit shall be processed in accordance with the procedures set forth in Chapter 17.52, Conditional Use Permits, with the following exceptions:

1. Any provision that requires the approval by the Planning Commission with appeal to the City Council shall be replaced with the requirement that the Planning Commission make a recommendation on the cannabis retailer conditional use permit and that the approval of such permit shall be made by the City Council.

2. Sections 17.52.020 (Application procedures) and 17.52.080 (Modifications) shall not apply.



3. Any procedures pertaining to noticing and the setting of a public hearing before the Planning Commission shall also apply to the City Council.

B. An applicant for a cannabis retailer conditional use permit shall comply with the California Environmental Quality Act ("CEQA"). No cannabis retailer conditional use permit shall be granted until the requisite CEQA review has been conducted.

**17.54.070 Approval of Cannabis Retailer Conditional Use Permit with Conditions**

A. Upon approval of a cannabis conditional use permit, the City Council may impose conditions in excess of the requirements set forth in this Chapter including, but not limited to, conditions relating to hours of operation, the operation of any cannabis business, restrictions relating to the deployment or use of the types of equipment used on the premises, and set back requirements.

B. The City may grant a cannabis conditional use permit prior to the applicant having obtained a state license from a licensing authority; however, no approved cannabis business may receive a certificate of occupancy nor operate in the City prior to possessing the requisite state and local licenses and permits.

C. All cannabis businesses must pay all applicable taxes pursuant to all federal, state, and local laws.

D. Cannabis businesses shall comply with all cannabis state laws and regulations.

**17.54.080 Separation Requirements and Other Limitations.**

A. Only one cannabis retailer for every 10,000 residents may lawfully operate in the City, with any fraction of that ratio being rounded down to the nearest whole number.

B. No cannabis business shall be located within a 200 foot radius of any residential zoning district. No cannabis business shall be located within a 600 foot radius of any day care center, youth center, public or private school providing instruction in kindergarten or any of grades 1-12, park, or any other retail cannabis business that is lawfully operating in the City and that is in existence at the time the cannabis conditional use permit is issued. The 600-foot distance requirement does not include any private school in which education is primarily conducted in a private home or a family day care home. The distances specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection.

**17.54.090 Premises.**

A. The building where the commercial cannabis activity occurs must be a minimum of 800 square feet in size.

B. All cannabis businesses shall be conducted only in the interior of enclosed structures, facilities and buildings and all operations including the storage or cultivation of cannabis plants at any stage of growth shall not be visible from the exterior of any structure, facility, or building. There shall be no outdoor storage of any kind associated with the cannabis business.

C. Loading areas and loading docks shall be located on the side or rear of the lot, and shall be screened by solid, decorative walls.

D. Hours of operation shall be as approved with the Conditional Use Permit.

E. Cannabis businesses shall only be conducted on properties that are fully compliant with all Banning Municipal Code requirements, including required development standards such as parking, landscaping, etc.

F. All entrances into the premises shall be locked at all times with entry controlled by the permittee's managers and staff.

G. 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 on the premises.

H. All commercial cannabis activity in any premises shall be separated from the main entrance and lobby, and cannabis and cannabis products shall be secured by a lock accessible only to managers and staff of the permittee.

I. A permittee shall not, without an approved amendment to the cannabis retailer conditional use permit, make a physical change, alteration, or modification of the premises that alters the premises or the use of the premises from the premises diagram filed with the permit application. Material or substantial changes, alterations or modifications requiring approval include, but are not limited to, the removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway or passage alters or changes limited-access areas within the premises.

J. A permittee shall not sublet the premises.

K. Inspections. The City shall have the right to enter all cannabis businesses from time to time upon 24-hour's notice for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the licensed premises for purposes of determining whether the cannabis business is being operated or maintained in compliance with this Code, state law, and other applicable laws and regulations. Any cannabis business licensed pursuant to this Chapter may be required to demonstrate,

upon demand by the City that the source and quantity of any cannabis or cannabis products found upon the licensed premises is in full compliance with any applicable local or state law or regulation.

#### **17.54.100 Personnel and Visitors.**

A. All agents, officers, or other persons acting for or employed by a cannabis business shall display a laminated or plastic-coated identification badge issued by the cannabis business at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the cannabis business's "Doing business as" name and city business license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

B. Employees and Volunteers Age Requirement. A cannabis business shall not employ an individual less than twenty-one (21) years of age, nor may a cannabis business permit an individual less than twenty-one (21) years of age to volunteer at the cannabis business.

C. Visitors. Limited access areas of a cannabis business shall not be open to the general public. Any individual permitted to enter a limited access area who is not a person that has undergone a background check in accordance with Chapter 5.33 of this Code and is not listed on the premises' worker list shall be considered a visitor. Notwithstanding the foregoing, state and local employees, or their official designees, shall not be considered a visitor provided the individual is on the licensed premises for purposes of official government business.

1. Visitors Identification and Record Requirements. Prior to permitting a visitor into a limited access area, a cannabis business must check the individual's valid government issued identification. The visitor shall be required to sign the cannabis business's visitor log, which must include the individual's name, date of entry, and purpose for entry.

2. Visitors Must Be at Least Twenty-One (21) Years of Age. A cannabis business may not permit a visitor who is less than twenty-one (21) years of age to enter a limited access area.

3. Visitors Prohibited Conduct. A visitor shall not be permitted to engage in any commercial cannabis activity while on the premises.

4. A manager shall be on the site at all times that any other person, except a security guard, is on the site.

#### **17.54.110 Security.**

The premises of a cannabis business must comply with all of the following security requirements:

A. Main entrance and lobby. The premises 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. The premises shall have an area designed for the secure receipt of cannabis and cannabis goods from a licensed distributor.

B. Commercial-Grade Locks. All points of ingress and egress to a premises shall ensure the use of commercial-grade, nonresidential door locks or window locks.

C. A permittee shall hire or contract for 24-hour security personnel to provide security services for the premises. All security personnel hired or contracted for by the cannabis business shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.

D. Video Surveillance. The premises must be equipped with a video surveillance system that meets all of the requirements set forth in this subsection.

1. Each premises shall have a digital audio/video surveillance system with a minimum camera resolution of 1280 x 720 pixels.

2. The surveillance-system storage device or the cameras shall be transmission control protocol (TCP) capable of being accessed through the internet.

3. The video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance and shall capture audio such that all sounds are intelligible.

4. Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection 5 below.

5. Areas that shall be recorded on the audio/video surveillance system include the following:

a) Areas where cannabis goods are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the premises;

b) Limited-access areas;

c) Security rooms;

d) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area.



e) Entrances and exits to the premises.

f) Waste containers.

6. Cameras shall record continuously 24 hours per day and at a minimum of 15 frames per second (FPS).

7. The physical media or storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering, fire, or theft.

8. Surveillance recordings shall be kept for a minimum of 90 days.

9. Surveillance recordings shall be monitored by a third party surveillance company.

10. Surveillance recordings are subject to inspection by the City, and shall be kept in a manner that allows the City to view and obtain copies of the recordings at the licensed premises upon not less than 24 hours advance notice. The permittee shall also send or otherwise provide copies of the recordings to the City upon reasonable notice by the City.

11. Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the United States National Institute Standards and Technology standards.

12. The video surveillance system shall be equipped with a failure notification system that provides notification to the permittee of any interruption or failure of the video surveillance system or video surveillance-system storage device.

13. The video surveillance system shall be equipped with a battery backup system capable of sustaining system operations in the case of an energy failure.

E. Alarm System. The premises shall have an audible interior and exterior security alarm system installed on all perimeter entry points and perimeter windows.

1. The alarm system shall be installed, maintained, monitored, and responded to by a security company licensed by the Department of Consumer Affairs, Bureau of Security and Investigative Services.

2. Upon request, a permittee shall make available to the City all information related to the alarm system

F. Secure Storage of Product. Cannabis and cannabis products possessed by a cannabis business shall be kept and stored in a secured manner at all times.

G. Lighting. The business entrance(s) and all window areas of any cannabis business shall be illuminated during evening hours. The cannabis business shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, and shielding.

#### **17.54.120 Track and Trace.**

All permittees shall comply with the track and trace system established by the State of California and as further described in Sections 5048 through 5052, inclusive, of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

#### **17.54.130 Signage.**

The premises must comply with the following signage requirements.

A. Business signage shall be limited to the name of the cannabis business only, shall be in compliance with the City's sign code, and shall contain no advertising of any companies, brands, products, goods, or services.

B. A sign shall be posted in a conspicuous place near each point of public access which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one inch in height, stating "All Activities Monitored by Video Camera."

C. Limited access areas shall be clearly identified by the posting of a sign which shall be not less than twelve inches wide and twelve inches long, composed of letters not less than one-half inch in height, which shall state, "Limited Access Area—Authorized Personnel Only."

D. A sign shall be posted stating "Smoking, vaporizing, ingesting, or otherwise consuming cannabis or cannabis products on these premises, in their vicinity, or in any public place is prohibited and a violation of the Banning Municipal Code."

#### **17.54.140 Cannabis Waste Management.**

Cannabis waste disposal shall be conducted as follows:

A. Cannabis Waste. Cannabis waste must be made unusable and unrecognizable prior to leaving the licensed premises by grinding it and incorporating it with fifty percent non-medicinal cannabis waste.

B. Cannabis waste must be placed in either a trash enclosure or a trash receptacle for which either is locked with a commercial grade lock that is only accessible by the owner, manager, or employee of the cannabis business and any

waste disposal company that provide waste disposal services for the cannabis business.

C. The permittee shall comply with Chapter 13.20, Industrial Wastewater Collection and Treatment of the Banning Municipal Code.

**17.54.150 General Sanitary Requirements.**

A. A cannabis business must ensure that its premises is maintained in a sanitary manner and activities on its premises are conducted in a sanitary manner.

B. All facilities of a cannabis business must have adequate and sufficient access to bathrooms and hand-washing facilities with running water at a suitable temperature.

**17.54.160 Odor Control.**

A. A cannabis business must have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and shall comply with all related Building Code requirements.

The ventilation and filtration system must be approved by the Building Official and installed prior to the commencement of cannabis cultivation activities.

**17.54.170 Operating Regulations.**

A. Limited Hours of Operation. A cannabis retailer may only be open to the public and engage in sales between the hours of 8:00 (eight) a.m. and 10:00 (ten) p.m.

B. Product Not Visible To Public. The display of cannabis and cannabis products for sale shall not be visible from outside the licensed premises.

C. Age Restricted Entry. A cannabis retailer may not permit an individual less than twenty-one years of age into the licensed premises, except a cannabis retailer with an M-license (allowing for the sale of medicinal cannabis and cannabis products) from the state may permit an individual aged eighteen years or older into the licensed premises if the cannabis retailer verifies the individual is a qualified patient with a physician's recommendation or a primary caregiver, as those terms are defined under State law.

D. Cannabis Paraphernalia Sales. Cannabis retailers may sell or otherwise provide equipment, supplies, and paraphernalia used to consume cannabis and cannabis products.

E. Electronic Point-of-Sale System Required. Cannabis retailers must have an electronic point of sale system that is either part of their seed to sale software or integrates with their seed to sale software. The electronic point of sale system must

be capable of producing an electronic or automatic paper record for all transactions associated with any product sold, rented, or otherwise provided to the customer.

F. No Sales of Expired Product. Cannabis retailers may not sell any expired products, cannabis or cannabis products. Cannabis retailers shall not alter, edit, or adjust in any manner an expiration date on any item or product once affixed by its manufacturer.

G. Handling of Edible Cannabis Products. Cannabis retailers that possesses edible cannabis products shall comply with the provisions of all relevant state and local laws regarding the storage, handling, and sale of food.

H. Sale of Untested Products. Cannabis retailers may sell cannabis or cannabis products that have not been tested by a testing laboratory from January 1, 2018 until such time as determined by the state. Thereafter, all cannabis and cannabis products sold by a dispensary must be tested by a testing laboratory prior to sale to a purchaser in accordance with MAUCRSA.

I. Consumption of Cannabis and Cannabis Products on Premises. Cannabis and cannabis products shall not be smoked, vaporized, ingested or otherwise consumed on the licensed premises of a cannabis retailer. Premises as used in this subsection includes the actual building, as well as any accessory structures, common areas and parking areas.

J. Tamper-Evident, Child-Resistant Packaging Required. A cannabis retailer shall not deliver or sell cannabis products that are not packaged or labeled in a resealable, tamper-evident, child-resistant package. The cannabis and shall include a unique identifier for the purposes of identifying and tracking cannabis and cannabis products.

K. Cannot Be Attractive to Children. Cannabis packaging and labeling shall not be designed to appeal to children, including, but not limited to, cartoon characters or similar images.

L. State-Mandated Warnings and Information. All cannabis and cannabis product labels and inserts shall include the state-mandated warnings and information contained in Business and Professions Code Section 26120(c). Notwithstanding the foregoing, during the period of time that the state permits untested cannabis and cannabis products to be sold to purchasers, all cannabis and cannabis products must have a label affixed to each package that clearly states "This product has not been tested as required by the Medicinal and Adult-Use Cannabis Regulation and Safety Act" and must comply with any other labeling requirements imposed by the state.

#### **17.54.180 Other Provisions.**

A. No person shall give, sell, distribute, or otherwise transfer any cannabis product in any manner not consistent with the approved cannabis conditional use permit or that violates local or state law.



B. Permittees must cooperate with City staff and Police Department personnel who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter.

C. Permittees must comply with all state laws and regulations that pertain to cannabis businesses including, but not limited to, the MAUCRSA, and any regulations promulgated by a licensing authority.

D. Minimum square footage of the building shall be 800 square feet unless otherwise provided by the State.

#### **17.54.190 Indemnification.**

A. Indemnification. To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any permit pursuant to this Chapter or the operation of any cannabis business approved by such permit pursuant to this Chapter. As a condition of approval of a permit granted under this Chapter, the applicant shall:

1. Indemnify and hold the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the cannabis business as provided in this chapter.

2. Maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the City.

3. Name the City as an additionally insured on all City required insurance policies.

4. Defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a permit or the operation of the cannabis business.

5. Reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder."

#### **SECTION 4. SEVERABILITY**

If any section, subsection, clause or phase or portion of this code is for any reason to invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance.

The City Council hereby declares that it would have passed the ordinance codified in this chapter; and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

**SECTION 5. PUBLICATION**

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a record of the passage and adoption thereof in the records of and the proceedings of the City Council at which time the same is passed and adopted. Within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated. The Ordinance shall go into effect thirty (30) days after its adoption, except for Section 3 of this Ordinance which shall have an effective date provided in Section 6 below.


**SECTION 6. EFFECTIVE DATE OF SECTION 3 OF THIS ORDINANCE AND CONTINGENCY ON TAX MEASURE APPROVAL BY THE VOTERS**

Section 3 of this Ordinance shall not take effect until January 1, 2019, and shall only take effect if Measure O is approved by the voters at the November 6, 2018 election, and such tax becomes operative.

**PASSED, APPROVED AND ADOPTED** this 13 day of November, 2018.

  
\_\_\_\_\_  
George Moyer, Mayor  
City of Banning

ATTEST:

  
\_\_\_\_\_  
Laurie Sampson, Acting Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon, APC

**CERTIFICATION:**

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 23rd day of October, 2018, and was duly adopted at a regular meeting of said City Council on the 13th day of November, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Franklin, Welch and Mayor Moyer

NOES: None

ABSENT: Council Member Peterson

ABSTAIN: None



Laurie Sampson, Acting Deputy City Clerk  
City of Banning