

SAN BERNARDINO ORDINANCE DRAFT NO. 1

AN INITIATIVE OF THE CITY OF SAN BERNARDINO  
AMENDING CHAPTER 5.05 (MEDICAL MARIJUANA  
DISPENSARIES), AMENDING CHAPTER 5.44, SECTION  
5.44.050 AND DELETING CHAPTER 19.06.026 (MEDICAL  
MARIJUANA DISPENSARIES, PROHIBITED USES).

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

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

WHEREAS, in 2005 the California Board of Equalization began issuing seller’s permits for sales consisting only of medical marijuana; and

WHEREAS, in 2008 the California Attorney General issued guidelines for the security and non-diversion of marijuana grown for medical use; and

WHEREAS, in 2014 the U.S. House of Representatives and U.S. Senate voted to enact Federal Omnibus Spending Bill which includes the “Rohrbacher-Farr amendment,” Section 538, that denies funding to federal law enforcement from interfering with medical marijuana operations in the various states which have decriminalized and/or authorized such operations; and

WHEREAS, in 2015, the California legislature passed the new Medical Marijuana Regulation and Safety Act (MMSRA) consisting of three separate bills: AB 266, AB 243, & SB 643. The bill creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.

WHEREAS, Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical marijuana dispensaries and cultivation; and

WHEREAS, nothing in this initiative shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and

WHEREAS, the operation of medical marijuana dispensaries and the cultivation of medical marijuana within the City of San Bernardino presently remain unregulated; and

WHEREAS, the California Constitution grants local governments in Article XI, Section 7 the authority under their police powers to regulate land use; and

WHEREAS, the proposed initiative has been deemed categorically exempt pursuant to Section 15305, Class 5 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act.

NOW, THEREFORE, THE CITY OF SAN BERNARDINO DOES HEREBY ORDAIN AS FOLLOWS:

#### **SECTION 1. TITLE**

This initiative shall be known and may be cited as The San Bernardino Medical Cannabis Restriction and Limitation Act.

#### **SECTION 2. AMENDMENTS TO THE SAN BERNARDINO MUNICIPAL CODE, SECTION 5.05**

Chapter 5.05 (Medical Marijuana Dispensaries) of the San Bernardino Municipal Code is hereby amended as follows: (All underlined language is new and to be inserted. All language struck through is to be deleted)

#### **CHAPTER 5.05. MEDICAL MARIJUANA DISPENSARIES CANNABIS BUSINESSES**

##### **Sec. 5.05.010. Medical Marijuana Dispensaries Prohibited. Purpose and Intent**

It shall be unlawful for any person or entity to establish, own, manage, conduct or operate any medical marijuana dispensary, as defined in San Bernardino Municipal Code Section 19.06.026 (Development Code), or to participate as an employee, contractor, agent, volunteer, or in any other manner or capacity, in any medical marijuana dispensary in the City of San Bernardino. The purpose of this Chapter is to establish a comprehensive set of regulations with attendant regulatory permits applicable to the operation of medical cannabis businesses, which include the dispensing, cultivation, and/or processing of medical cannabis. The regulations are intended to ensure such operations are consistent with the overall health, welfare and safety of the city and its populace, and that such operations are in compliance with California's Compassionate Use Act of 1996 as well as California's Medical

Marijuana Program Act of 2003, and the Medical Marijuana Regulation and Safety Act (MMSRA).

The Chapter is not intended to permit activities that are otherwise illegal under federal, state or local law. This chapter is not intended to conflict with federal or state law.

#### Sec. 5.05.020. Operation Prohibited Without Permit

It shall be unlawful for any person or entity to establish, own, manage, conduct, lease to, or operate any medical cannabis business; to participate as an employee, contractor, agent, volunteer, or in any other manner capacity, in any medical cannabis in the City of San Bernardino.

#### Sec. 5.05.030. Definitions

The following definitions shall apply to this chapter unless the context clearly denotes otherwise.

- 1) “Applicant” means an individual person or responsible party representing a partnership, corporation, or limited liability company, seeking a cannabis business permit under this Act.
- 2) “Attorney General Guidelines” shall refer to the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use.
- 3) “Cultivation” or “marijuana cultivation” means the growing of medical cannabis and industrial hemp for medical purposes as defined in strict accordance with Health and Safety Code sections 11362.5 and 11362.7 et seq.
- 4) “Cultivation site” means a facility where medical cannabis is cultivated, propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, and where the operator holds a valid medical marijuana business permit for cultivation from the City of San Bernardino and a valid state license to cultivate marijuana as required by state law
- 5) “Cultivator” means a person who engages in the cultivation of medical cannabis.
- 6) “Dispensary” means a medical marijuana business facility where cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that delivers, pursuant to express authorization, medical cannabis and medical cannabis products as part of a retail sale, and where the operator holds a valid medical marijuana business permit from the City of San Bernardino authorizing the operation of a dispensary, and a valid state license as required by state law to operate a dispensary.
- 7) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

- 8) “Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible medical cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.
- 9) “Fully enclosed and secure structure” means a 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, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
- 10) “Identification card” has the same definition as set forth in Health and Safety Code section 11362.7, and as may be amended, and which provides that “Identification card” means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
- 11) “Indoors” means within a fully enclosed and secure structure.
- 12) “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- 13) “Live scan” means a system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the city council
- 14) “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as defined in this section, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, where the operator holds a valid medical marijuana business permit for manufacturing from the City of San Bernardino.
- 15) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate or manufactured product intended for internal consumption or topical application.
- 16) “Manufacturing site” means a location that produces, prepares, propagates, or compounds medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid Medical marijuana business permit for manufacturing from the City of San Bernardino and, a valid state license as required for manufacturing of cannabis products.
- 17) “Marijuana” means “cannabis,” as that term is defined in this Title.

- 18) “Medical marijuana” means marijuana or cannabis used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.).
- 19) “Medical cannabis business permit” means a regulatory permit issued by the City of San Bernardino pursuant to this Chapter to permit a medical cannabis business to dispense, cultivate, and/or manufacture medical cannabis, and is required before any medical cannabis activity may be conducted in the City. The initial permit and annual renewal of a medical cannabis business permit(s) is made expressly contingent upon the business’ ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the medical cannabis activity at issue
- 20) “Medical cannabis business” means a site or sites that dispenses cannabis, cultivates cannabis, manufactures cannabis, or conducts any combination thereof.
- 21) “Owner” means the owner of a medical cannabis business and may include an individual, collective, cooperative, or corporate entity.
- 22) “Permit” means the various regulatory licenses issued pursuant to this chapter, including but not limited to a business license for a medical cannabis business.
- 23) “Person” means any natural person, firm, corporation, partnership, club, or any association or combination of natural persons, whether acting by themselves or through any servant, agent or employee.
- 24) “Physician’s referral” means a written recommendation for a patient from a licensed medical doctor indicating that marijuana would be a beneficial treatment for a serious medical condition of the patient.
- 25) “Primary caregiver” has the same definition as set forth in Health and Safety Code section 11362.7(d), (e), and as may be amended.
- 26) “Qualified Applicant” means an individual or entity applying for medical cannabis business permit(s) who has successfully fulfilled the requirements of subsections a) through (n) of Section 5.05.05 of this Chapter.
- 27) “Qualified Patient” has the same definition as set forth in Health and Safety Code section 11362.7(f).

#### Sec. 5.05.040. Medical Cannabis Business Permit

Prior to initiating operations as a medical cannabis business, including the dispensing, cultivating, manufacturing or any combination thereof, and as a continuing requisite to conducting operations, the owner of a medical cannabis business shall obtain a regulatory permit from the City or its designee under the terms and conditions set forth in this chapter. Conditions necessary for the continuing validity of any and all regulatory permits issued for the operation of a medical cannabis business include:

- 1) Substantial adherence to each and every requirement of this Chapter.
- 2) Maintaining with the city current and valid contact information of the owner(s) of the medical cannabis business.

- 3) Maintaining with the city current and valid contact information of a legal representative of the medical cannabis business.

Sec. 5.05.050. Applications for Medical Cannabis Business Permits.

The owner of a proposed medical cannabis business shall file an application with the City of San Bernardino on a form provided by the City. The application shall include whether the applicant desires to apply to operate a dispensary site, a cultivation site, a manufacturing site or any combination thereof. The application shall be accompanied by a nonrefundable application processing fee in an amount established by a resolution of the City.

A qualified application for a medical cannabis business permit shall include the following information:

- 1) Address of the location or locations where the medical cannabis business will be located.
- 2) Proof that the applicant has owned or leased the property(s) for a minimum of six (6) months prior to the application for the permit(s). If the property(s) is/are being leased or purchased under contract, a copy of such contract or fully executed lease must be submitted with the application.
- 3) If the property(s) is/are being leased, the applicant must submit a signed and notarized authorization acknowledging that the current owner of the property(s) is aware of the intended use as a medical cannabis business and consents to such use.
- 4) A site plan describing the property(s) with fully dimensioned interior and exterior floor plans including: electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the Americans with Disabilities Act. Any improvements or alterations to the property which require building permits must be submitted to the Building and Safety Division separately for review/approval.
- 5) Exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front and rear side(s) of the property(s).
- 6) Photographs depicting the entire interior of the proposed property(s).
- 7) For each manager, employee, volunteer, a fully legible color copy of one valid government issued form of identification, two passport photographs, live scan results and the original legible, completed employee application for each manager, employee or volunteer.
- 8) Proof that the medical cannabis business/collective has operated as a non-profit mutual benefit corporation, a non-profit unincorporated association, or cooperative for six (6) months prior to the filing of the application for business permit(s). Proof of the above may be established through a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's Bylaws or any other verifiable proof acceptable by the City.
- 9) Applicant must provide a current Board of Equalization Seller's Permit.

- 10) A copy of the Medical Cannabis operating standards with a statement dated and signed by the responsible party on-site stating under the penalty of perjury, that they read, understand, and shall ensure compliance with the aforementioned operating standards.
- 11) Proof that applicant has cultivation experience for at least six (6) months prior to submitting application. Proof may include, but is not limited to, documented proof that applicant has operated a legal medical marijuana cultivation site for a minimum of six (6) months or proof that the applicant has possessed a license to sell nursery stock in California for a minimum of six (6) months prior to submitting application.
- 12) Applicant(s) must not have suffered any felony convictions within the last 4 years.
- 13) A security plan including the following measures:
  - a) Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 30 days of digitally recorded documentation.
  - b) The lease/business space/cultivation site shall be alarmed with a centrally monitored fire and burglar alarm system, and monitored by an alarm company.
  - c) Entrance to the dispensing area or “medication room”, cultivation site and any storage areas shall be locked at all times, and under the control of employees with current and valid employee permits.
  - d) Interior Lighting. The premises within which the medical cannabis business is operated shall be equipped with and, at all times during which is open to the public or any portion thereof, shall remain illuminated with overhead lighting fixtures of sufficient intensity to illuminate every place to which members of the public or portions thereof are permitted access with an illumination of not less than two foot-candles as measured at the floor level.
  - e) Exterior Lighting. The exterior of the premises upon which the medical cannabis business is operated shall be equipped with and, at all times between sunset and sunrise, shall remain illuminated with fixtures of sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas.
  - f) All windows on the building that houses the dispensary and/or cultivation site shall be appropriately secured and all cannabis securely stored, and a reliable, commercial alarm system shall be installed and maintained.
- 14) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

Sec. 5.05.060. Transferability of Medical Cannabis Business Permits.

- 1) Notwithstanding any conflicting provision(s) in any other Section(s) of the San Bernardino Municipal Code, including the Development Code, Medical Marijuana Business Permits may be transferred to another party or entity only so long as the transferee successfully adheres all of the requirements of this Chapter.

- 2) Notwithstanding any conflicting provision(s) in any other Section(s) of the San Bernardino Municipal Code, including the Development Code, Medical Marijuana Business Permits may be transferred to another location only so long as the new location successfully complies all of the requirements of this Chapter.

Sec. 5.05.070. Review of Permit Applications, Timing and Priority Order

- 1) The City or its agent shall, within 15 calendar days of the date of adoption of this Chapter, create registration application forms and instructions that strictly require only the information required pursuant to Sec. 5.05.050 of this Chapter, and shall begin accepting applications on a published date within 30 calendar days of the date of adoption of this Chapter.
- 2) At least seven calendar days prior to the date the City or its agent will begin accepting applications for registration, the City or its agent shall publish, on the City's website and once in a daily newspaper of general circulation, the date, time, and manner on and in which collectives and cooperatives must submit registration application forms and the required fee, and shall make publicly available those forms and instructions at City Hall and on the City's website.
- 3) Each applicant shall submit with its permit(s) application any required fee pursuant to this Chapter.
- 4) As each applicant submits its application for permit(s) and fee(s) pursuant to this Chapter, the City or its agent shall time-stamp the application with the date and time received. Seven calendar days after the date the City or its agent begins accepting applications, the City or its agent shall stop accepting applications and shall that day establish a priority list that identifies by name, address, date and time the order in which applications were received. The order in which applications were received shall be the order in which the City or its agent shall process them. A collective or cooperative may only be assigned one place on the priority list, and multiple submissions will result in immediate disqualification from the registration process.
- 5) Within seven calendar days of establishing the priority list, the City or its agent shall publish the priority list on the City's website and once in a local daily newspaper of general circulation.
- 6) The order set forth in the priority list shall remain in effect until the priority list has been exhausted, at which time, should the number of current valid applicants fall below that established by minimum number of use permits required pursuant to Section 5.05.08 of this Chapter, a new date and time will be set for submission of additional applications following the process set forth herein, but not more frequently than once every 180 days.
- 7) Following establishment of the priority list, the City or its agent shall begin processing as a ministerial duty the registration applications of collectives and cooperatives in the order established by the priority list. The City or its agent shall continue processing applications until the maximum number of medical cannabis permits have been issued. This processing of the applications shall consist of verification of the information required by Section 5.05.050 of this Chapter.

Sec. 5.05.080. Action on Applications for Permits

This section shall govern action on all applications for all permits provided for in this Chapter.

- 1) Upon the receipt of an application for a permit, the City or its agent shall, as a ministerial duty, complete processing and issue requested permit(s) within 30 calendar days, unless:
  - a) The applicant does not qualify under Section 5.05.050 of this Chapter; or
  - b) The applicant has made one or more false or misleading statements, or omissions on the application or during the application process; or
  - c) A proposed location for a medical cannabis business is not allowed by state or local law, statute, ordinance, or regulation, including this code, at a particular location; or
  - d) The applicant is not a primary caregiver or qualified patient or the legal representative of the medical cannabis business; or
  - e) The applicant or any person who is managing or is otherwise responsible for the activities of the cooperative or collective has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
- 2) If the City or its agent fails to either issue a permit or deny the application for Permit in writing stating the reasons for denial, within 30 calendar days of receipt of the application, the application shall be deemed qualified and complete and the Permit(s) deemed issued, and thus deemed eligible for a Certificate of Occupancy and gross receipts business license as below.
- 3) Once all available and/or required permits are issued or deemed issued, no applications will be accepted or considered until such time as additional permits are made available. When additional permits become available, applications will then be taken and will be considered as provided herein upon the timely filing of a new application therefore.
- 4) Permits shall be valid for two years and an application for renewal must be filed not later than 30 calendar days prior to the expiration of the permit, but no earlier than 60 calendar days prior to the expiration of the registration. A Permit may be renewed for additional periods of two years by submitting an application to the City or its agent.
- 5) Once, the collective or cooperative shall be eligible for a Certificate of Occupancy, which shall be issued as a ministerial duty within 30 calendar days (to be tolled if, and only if, requested by the applicant to allow time for inspection or for work required per inspection) during which time the standard building and fire inspections shall be completed or deemed completed and applicants allowed time as they request to complete any work required per inspection. The Certificate of Occupancy shall issue without regard to any parking requirements, which shall be deemed met or waived. If the Certificate of Occupancy is not issued, or denied in a writing stating the grounds therefore, in this time it shall be deemed issued.

- 6) Once issued its Certificate of Occupancy, a cooperative or collective shall be eligible for a gross receipts business license which shall be issued as a ministerial duty immediately upon application.

#### Sec. 5.05.090. Maximum Number of Medical Cannabis Businesses

At least 1 medical cannabis business permit shall be issued per 10,000 (or fraction thereof) residents of the City of San Bernardino, as determined by the last Federal Census or as determined by the latest population estimate by the Department of Finance of the State of California whichever is higher, and in no case less than 20, medical marijuana business permits in each category shall be issued by the City or its agent if there are that many eligible applicants. The City Council may increase, but not decrease, the number of medical cannabis business permits registered in the City under the formula above which shall be the maximum number registered unless raised by the City Council.

#### Sec. 5.05.100. Dispensary General Operating Standards and Restrictions

A medical cannabis dispensary shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the permit for a medical cannabis business to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and the San Bernardino Municipal Code, and to mitigate any potential adverse impacts of the medical cannabis business on the public health, safety or welfare.

##### 1) Security.

- a) At least one (1) security guard, armed or unarmed, who is licensed by the State of California shall be present at the location of the medical cannabis business during all business hours. The security guard shall only be engaged in activities related to providing security for the medical cannabis business, except on an incidental basis. Each security guard shall possess a "Security Guard Card" at all times.
- b) Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 30 days of digitally recorded documentation.
- c) The location of the medical cannabis business shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company.

##### 2) Records.

- a) Medical cannabis businesses shall maintain records reflecting:
- b) The full name, address, and telephone number(s) of the owner and/or lessee of the property.
- c) The full name, address, and telephone number(s) of all employees.
- d) Results of annual live scans of all employees.
- e) The state issued identification card number of all members to whom the medical cannabis business provides medical marijuana. If a member does not

- have a state issued identification card, then the medical cannabis business shall assign the member a unique identifying number for the use of the medical cannabis business, and maintain a written copy of the physician's referral for the member.
- f) A copy of the medical cannabis business' commercial general liability insurance policy and all other insurance policies related to the operation of the medical cannabis business.
  - g) Proof of a valid and current permit issued by the city in accordance with this chapter. Every medical cannabis business shall display at all times during business hours the permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the location of the medical cannabis business.
- 3) Employees
- a) A medical cannabis business shall not have any employees, operators, or volunteers who have suffered a conviction for a felony drug offense having occurred within the past four (4) years. This requirement shall be confirmed through the results of a live scan being conducted annually by the medical cannabis business on all employees, the written results of such live scans being maintained at the location of the medical cannabis business.
  - b) All employees must have a current and valid identification card.
- 4) Volume.
- a) A medical cannabis dispensary may cultivate, dispense, store or transport medical cannabis in aggregate amounts tied to its members' needs. A medical cannabis cultivation site may cultivate, store, or transport medical cannabis in aggregate amounts tied to its member's needs. To these ends, a medical cannabis business shall ensure compliance with state law limits on amount of dried marijuana and amount of marijuana plants allowed per qualified patients and persons with identification cards and/or primary caregivers.
- 5) No Recommendations On-site.
- a) A medical cannabis business shall not have a physician or an attending physician at the location of the medical cannabis business to evaluate patients or provide a recommendation for medical marijuana.
- 6) Signage.
- a) The following signs in measurements of not less than eight (8) by ten (10) inches shall be clearly and legibly posted in a conspicuous location inside the medical cannabis business where they will be visible to members in the normal course of a transaction, stating:
    - i) "Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest."
    - ii) "Loitering on and around the collective site is prohibited by California Penal Code § 647(e) and patrons must immediately leave the site and not

consume medical marijuana in the vicinity of the collective or on the property or in the parking lot."

- iii) "Forgery of medical documents is a crime."
- iv) "Patrons may be subject to prosecution under federal marijuana laws."
- v) "Use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery."
- vi) "Smoking, ingesting or consuming marijuana on this property or within 20 feet of the medical cannabis business is prohibited."
- vii) "Minors are prohibited from entering this property unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian."
- viii) "Neither the City of San Bernardino, County of San Bernardino, nor any other governmental agency has tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed at this location."

7) No Alcohol.

- a) Medical cannabis businesses shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

8) Quality control.

- a) The medical cannabis business shall analyze representative samples of all strains of medical marijuana that are to be distributed to members. The representative samples shall be analyzed by the medical cannabis business itself or by an independent laboratory (if and when such is available) for harmful pesticides and other contaminants. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level that exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith and not dispensed to members or qualified patients.

9) Labeling.

- a) Any medical cannabis provided to members shall be properly labeled.
- b) A distinct and clearly legible label must be affixed onto all medical marijuana items provided by a medical cannabis business which states:
  - i) This item contains medical marijuana
  - ii) Warning that the item is a medication and not a food
  - iii) Warning that the item is to be kept away from children.
  - iv) Warning if nuts or other known allergens are used.
  - v) Date of manufacture.
- c) Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the medical cannabis business.

10) Edibles

- a) All medical marijuana edibles shall comply with the California Sherman Food,

Drug, and Cosmetic Law, as codified in section 109875, et seq. of Part 5 of Division 104 of the Health and Safety Code, and as amended from time to time. Further minimum requirements for all medical marijuana edibles include:

- i) No edible medical marijuana products requiring refrigeration or hot-holding shall be manufactured for sale or distribution at a medical cannabis business, due to the potential for food-borne illness. Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at a medical cannabis business.

11)Signage.

- a) Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the San Bernardino Municipal Code.
- b) Business identification signage shall comply with the appropriate sign requirements with the applicable zoning district.

12)Employee Training.

- a) All employees of a medical cannabis business shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding maintaining compliance by the operation with State and local law.

13)Operating Hours for Medical Marijuana Dispensary.

- a) The maximum hours of operation for a medical marijuana dispensary shall be daily from 9:00 a.m. to 11:00 p.m.

14)Use Restrictions.

- a) Smoking, ingesting or consuming marijuana at the location of the medical cannabis business or within 20 feet of the medical cannabis business is prohibited.

15)No Minors.

- a) No one under 21 years of age shall be permitted to enter establishment, unless such person is a qualified patient and is accompanied by his or her Primary Caregiver, licensed Attending Physician, parent(s) or documented legal guardian.

16)Odor Abatement.

- a) A medical cannabis business shall have an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the medical cannabis business shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location of the medical cannabis business is not detected outside the building, on adjacent properties or public rights-of-

way, or within any other unit located within the same building as the medical cannabis business, if the use only occupies a portion of a building.

17) Insurance.

- a) A medical cannabis business shall carry with minimal coverage provided of comprehensive commercial general liability insurance and comprehensive automotive liability insurance (if automobiles are used by the medical cannabis business for any purpose) protecting the medical cannabis business in an amount of not less than one million dollars (\$1,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than one million dollars (\$1,000,000.00) aggregate for each personal injury liability, products liability and each accident.

18) Delivery of Medical Marijuana to Members

- a) All employees who provide delivery of medical marijuana from a medical cannabis business to a member located outside the medical cannabis business location must have a valid identification card at all times with the employee while the delivery is being made.

Sec. 5.05.110. Medical Cannabis Cultivation Standards and Quality Control.

A medical marijuana cultivation site shall operate in conformance with the standards set forth in this Chapter and shall operate in compliance with California law to mitigate any potential adverse impacts of the cultivation of medical marijuana on the public health, safety or welfare. Medical marijuana cultivation facilities, within the City, shall be in conformance with the following standards:

- 1) Indoor medical marijuana cultivation facilities may, but need not, be located within the same building or structure as a medical marijuana manufacturing facility or medical marijuana dispensary facility only if the indoor medical marijuana cultivation facility is located in separate rooms of the building or structure, and only if the indoor medical marijuana cultivation facility has its own separate entrance into the building or structure.
- 2) Subject to the further requirements of this Section, only the following State cultivator license classification types specified in the MMRSA and Business and Professions Code sections 19300.7 and 19332 will be allowed to operate in the City: 1A, 1B, 2A, 2B, and 4.
- 3) Medical marijuana cultivation is allowed only within fully enclosed and secure structures that are inaccessible to minors.
- 4) From any public right-of-way, there shall be no visible exterior evidence of any indoor medical marijuana cultivation activity.
- 5) Indoor medical marijuana cultivation shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.
- 6) All indoor medical marijuana cultivation facilities shall fully comply with all of the applicable restrictions and mandates set forth in State law. All indoor

medical marijuana cultivation facilities shall comply with all size requirements for such facilities as imposed by State law. Indoor medical marijuana cultivation facilities shall not engage in any activities not allowed by indoor medical marijuana cultivation facilities pursuant to State law. All indoor medical marijuana cultivation facilities shall comply with all horticultural, labeling, processing, and other standards required by State law.

- 7) All medical marijuana shall be kept in a secured manner during all business and nonbusiness hours.
- 8) All indoor medical marijuana cultivation facilities shall operate within a legal structure that is compliant with all applicable State and local laws.
- 9) All indoor medical marijuana cultivation facilities must pay all applicable sales taxes pursuant to all federal, State, and local laws.
- 10) On-site smoking, ingestion, or consumption of marijuana or alcohol shall be prohibited on the premises of all indoor medical marijuana cultivation facilities. The term "premises" as used in this Subsection includes the actual indoor medical marijuana cultivation building, as well as any accessory structures and parking areas. The indoor medical marijuana cultivation facility building entrance shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming marijuana or alcohol on the premises or in the vicinity of the facility is prohibited.
- 11) Signage for all indoor medical marijuana cultivation facilities shall be limited to name of 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. Signage shall not include any drug-related symbols.
- 12) Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises. Indoor medical marijuana cultivation facilities shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of any indoor medical marijuana cultivation facility.
- 13) Physician services shall not be provided on the premises. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site.
- 14) The building in which any indoor medical marijuana cultivation facility is located, as well as the operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and the MMRSA. Compliance with all requirements of State law pertaining to indoor marijuana cultivation is also required.
- 15) The operators of all indoor medical marijuana cultivation facilities shall provide the City or the City's designee with the name, phone number, facsimile number, and email address of an on-site representative to whom the City and the public can provide notice if there are any operational problems associated with the indoor medical marijuana cultivation facility. All indoor medical marijuana cultivation facilities shall make every good faith effort to encourage residents

- and the public to call this representative to resolve any operational problems before any calls or complaints are made to the City or law enforcement.
- 16) All indoor medical marijuana cultivation facilities shall have a security plan including the following measures:
    - a) Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 120 concurrent hours of digitally recorded documentation in a format approved by the City or the City's designee. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the storage areas, cultivation areas, all doors and windows, and any other areas as determined by the City or the City's designee. Remote log-in information shall be provided to the City and the Chief of Police to allow them to view the security camera images and recordings from their own facilities at any time. Any disruption in security camera images shall be cured expeditiously in good faith.
    - b) The indoor medical marijuana cultivation facility shall be alarmed with an alarm system that is operated and monitored by a reputable security company.
    - c) Entrance to the cultivation area, and all storage areas, shall be locked at all times, and under the control the indoor medical marijuana cultivation facility's staff.
  - 17) The entrances and all window areas shall be illuminated during evening hours. The facility shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etcetera, and shall secure the necessary lighting approvals and permits as needed.
  - 18) All windows on the building that houses the indoor medical marijuana cultivation facility shall be appropriately secured and all marijuana securely stored.
  - 19) Recordings made by the security cameras shall be made available to the City, the City's designee, or law enforcement upon verbal request—no search warrant or subpoena shall be needed to view the recorded materials.
  - 20) The City, the City's designee, and law enforcement shall have the right to enter the indoor medical marijuana cultivation facility at any time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and the State.

Sec. 5.05.120. Medical Cannabis Manufacturing Standards and Quality Control.

Medical marijuana manufacturing, within the City, shall be in conformance with the following standards:

- 1) Medical marijuana manufacturing facilities may be located within the same building or structure as an indoor medical marijuana cultivation facility or a medical marijuana dispensary site only if the medical marijuana manufacturing facility is located in separate rooms of the building or structure, and only if the

medical marijuana manufacturing facility has its own separate entrance into the building or structure.

- 2) Subject to the further requirements of this Section, only State manufacturer license classification type 6 level 1 will be allowed to operate in the City using nonvolatile solvents in accordance with the MMRSA and Business and Professions Code sections 19300.7 and 19341.
- 3) Medical marijuana manufacturing is allowed only within fully enclosed and secure structures that are inaccessible to minors.
- 4) From any public right-of-way, there shall be no visible exterior evidence of any medical marijuana manufacturing activity.
- 5) Medical marijuana manufacturing shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.
- 6) All medical marijuana manufacturing facilities shall fully comply with all of the applicable restrictions and mandates set forth in State law. All medical marijuana manufacturing facilities shall comply with all size requirements for such facilities as imposed by State law. Medical marijuana manufacturing facilities shall not engage in any activities not allowed by medical marijuana manufacturing facilities pursuant to State law. All medical marijuana manufacturing facilities shall comply with all horticultural, labeling, processing, and other standards required by State law.
- 7) All medical marijuana shall be kept in a secured manner during all business and nonbusiness hours.
- 8) All medical marijuana manufacturing facilities shall operate within a legal structure that is compliant with all applicable State and local laws.
- 9) All medical marijuana manufacturing facilities must pay all applicable sales taxes pursuant to all federal, State, and local laws.
- 10) On-site smoking, ingestion, or consumption of marijuana or alcohol shall be prohibited on the premises of all medical marijuana manufacturing facilities. The term "premises" as used in this Subsection includes the actual medical marijuana manufacturing building, as well as any accessory structures and parking areas. The medical marijuana manufacturing facility building entrance shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming marijuana or alcohol on the premises or in the vicinity of the facility is prohibited.
- 11) Signage for all medical marijuana manufacturing facilities shall be limited to name of 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. Signage shall not include any drug-related symbols.
- 12) Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises. Medical marijuana manufacturing facilities shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcoholic beverages shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of any medical marijuana manufacturing facility.

- 13) Physician services shall not be provided on the premises. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site.
- 14) The building in which any medical marijuana manufacturing facility is located, as well as the operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and the MMRSA. Compliance with all requirements of State law pertaining to medical marijuana manufacturing is also required.
- 15) Medical marijuana manufacturing facilities shall not distribute, sell, dispense, or administer marijuana from the facility to the public. Medical marijuana manufacturing facilities shall not be operated as medical The operators of all medical marijuana manufacturing facilities shall provide the City or the City's designee with the name, phone number, facsimile number, and email address of an on-site representative to whom the City and the public can provide notice if there are any operational problems associated with the medical marijuana manufacturing facility. All medical marijuana manufacturing facilities shall make every good faith effort to encourage residents and the public to call this representative to resolve any operational problems before any calls or complaints are made to the City or law enforcement.
- 16) All medical marijuana manufacturing facilities shall be operated in accordance with the conditions of approval associated with the applicable CUP for the parcel of real property upon which the medical marijuana manufacturing activities occur.
- 17) All medical marijuana manufacturing facilities shall have a security plan including the following measures:
  - a) Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 120 concurrent hours of digitally recorded documentation in a format approved by the City or the City's designee. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the storage areas, manufacturing areas, all doors and windows, and any other areas as determined by the City or the City's designee. Remote log-in information shall be provided to the City and the Chief of Police to allow them to view the security camera images and recordings from their own facilities at any time. Any disruption in security camera images shall be cured expeditiously in good faith.
  - b) The medical marijuana manufacturing facility shall be alarmed with an alarm system that is operated and monitored by a reputable security company.
  - c) Entrance to the manufacturing area, and all storage areas, shall be locked at all times, and under the control the medical marijuana manufacturing facility's staff.
- 18) The entrances and all window areas shall be illuminated during evening hours. The facility shall comply with the City's lighting standards regarding fixture type.

wattage, illumination levels, shielding, etcetera, and shall secure the necessary lighting approvals and permits as needed.

- 19) All windows on the building that houses the medical marijuana manufacturing facility shall be appropriately secured and all marijuana securely stored.
- 20) Recordings made by the security cameras shall be made available to the City, the City's designee, or law enforcement upon verbal request—no search warrant or subpoena shall be needed to view the recorded materials.

#### Sec. 5.05.130. Fees

- 1) The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the implementation of this Chapter through an appropriate fee recovery mechanism to be imposed upon medical cannabis businesses and their operations.

#### Sec. 5.05.140. Annual Business License Tax Assessment.

- 1) Every medical cannabis business, excepting a qualified "Nonprofit Organization", whether it is organized or conducted as a "not for profit" business, a "non-profit" business, or a "for-profit" business, shall pay a separate business license tax at a rate of five percent (5 %) of the gross receipts generated.

#### Sec. 5.05.150. Location Restrictions

- 1) No Medical Marijuana Business may be located in any Residential zone.
- 2) Medical Cannabis Businesses may only be located in an CG-1 zone (Commercial General), OIP zone (Office Industrial Park), or CR-2 zone (Commercial Regional – 2, or CG-1 zone (Commercial General-1) designated of the San Bernardino Municipal and/or Development Code.
- 3) No Medical cannabis businesses shall be located within six hundred (600) feet of any existing public school.
- 4) No Medical cannabis businesses shall be located within two hundred fifty (250) feet of any existing church.
- 5) No medical cannabis dispensary may be located within two hundred fifty (250) feet of any other permitted medical cannabis dispensary.
- 6) All distances specified in this Section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the property line to the nearest property line of those uses described herein.

#### Sec. 5.05.0160. Violations and Penalties.

Any person, whether as principal, employee, agent, partner, City or its agent, officer, stockholder, or trustee or otherwise, violating or causing the violation of any of the provisions of this chapter shall be guilty of a misdemeanor, and any conviction thereof shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

Sec. 5.05.0170. Public Nuisance.

In addition to the penalties set forth in this chapter, any medical cannabis business which is operating in violation of any provisions of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the permit holder of the medical cannabis business.

Sec. 5.05.0180. Prohibited Operations and Nonconforming Use

All medical marijuana businesses in violation of Health and Safety Code Section 11362.7 et seq. and 11362.5 et seq., this chapter, or any other applicable State law are expressly prohibited. It is unlawful for any medical cannabis business in the city, or any agent, employee or representative of such medical cannabis business, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the medical cannabis business, or to violate any State law, or this chapter. No use which purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the San Bernardino Zoning Code, the San Bernardino Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

**SECTION 3. AMENDMENTS TO SAN BERNARDINO MUNICIPAL CODE CHAPTER 5.44, SECTION 5.44.050 IS AS FOLLOWS:**

The People of the City of San Bernardino do hereby enact and ordain that Chapter 5.44, Section 5.44.050, entitled, Issuance of Permits, is hereby amended to read as follows: (All underlined language is new and to be inserted. All language struck through is to be deleted)

Section 5.44.050. Definitions

The Chief of Police shall either approve or deny the issuance by the City Clerk of the permit to the applicant within forty-five days of the date that the copy of the application is submitted to him. The Chief of Police may deny a permit on any of the following grounds:

1. The operation will not comport with the peace, health, safety, convenience, and general welfare of the public;
2. The application is not complete in that all requested information is not supplied;
3. The operation has been or is a public nuisance;
4. The operation would be in violation of a City Ordinance or state law ~~or~~ federal law;

**SECTION 4. AMENDMENTS TO SAN BERNARDINO DEVELOPMENT CODE SECTION 19.06.026 IS AS FOLLOWS:**

The People of the City of San Bernardino do hereby enact and ordain that Chapter 19.06.026, entitled, Medical Marijuana Dispensaries, Prohibited Uses, is hereby deleted.

**SECTION 5. CONSISTENCY WITH STATEWIDE REGULATION OF MARIJUANA.**

This chapter shall be read consistent with any statewide regulation of medical marijuana that is promulgated by the California legislature or by voter approval in the future. In the event statewide regulation is passed pursuant to the decriminalization or legalization of marijuana for recreational use, this chapter shall govern the conduct of those business allowed to distribute marijuana under such provisions to the fullest extent possible consistent with such statewide regulation.

**SECTION 6. SEVERABILITY**

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

**SECTION 7. MAJORITY APPROVAL; EFFECTIVE DATE:**

This ordinance shall be effective only if approved by a majority of voters and shall go into effect immediately upon passage.

**SECTION 8. COMPETING MEASURES:**

In the event that this measure and another measure or measures relating to the regulation of medical marijuana in the City of San Bernardino shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the regulation of medical marijuana in the City of San Bernardino shall be null and void.

**SECTION 9. SPECIAL OR GENERAL ELECTION:**

This initiative ordinance shall be set for a special or regular election at the earliest time allowed by law.