

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

**AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE MUNICIPAL CODE TO LOWER THE TAX IMPOSED ON CANNABIS BUSINESSES, AMENDING TITLE 4 (LICENSES AND REGULATIONS) TO ADD A NEW CHAPTER PERTAINING TO COMMERCIAL CANNABIS OPERATOR PERMITS, AND AMENDING TITLE 6 (PUBLIC PEACE, MORALS AND WELFARE) TO ELIMINATE THE PROHIBITION ON COMMERCIAL CANNABIS ACTIVITY IN THE CITY, AND MAKING A FINDING OF EXEMPTION UNDER CEQA**

**WHEREAS**, the City Council considered options for allowing for commercial cannabis operations in the city at a Study Session held on February 8, 2022. At the conclusion of the Study Session, Council directed staff to proceed with preparation of draft Municipal Code amendments and related operative procedures that would allow up to three commercial cannabis operations consisting of any combination of cannabis retailers (storefront sales) in zoning districts focused on the downtown, along portions of San Bruno Avenue and El Camino Real, and at The Shops at Tanforan, and for distribution uses in the M-1 Zone north of I-380.

**WHEREAS**, a Notice of Public Hearing was duly posted and noticed for consideration of the ordinance amendment at the City of San Bruno City Council meeting of September 27, 2022, and on said date, the Public Hearing was opened, held and closed.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council, based on the facts in the Staff Report, written and oral testimony, and exhibits presented, makes the following findings of facts in support of the proposed Municipal Code amendments regarding establishment of commercial cannabis retailers (storefront sales) and distribution operations:

1. The proposed ordinance is consistent with the General Plan of the City of San Bruno.
2. This Ordinance has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and the San Bruno environmental review procedures and is Categorically Exempt.
3. The proposed ordinance to establish provisions for commercial cannabis retailers and distribution uses will not be detrimental to the health, safety, morals, comfort and general welfare of the Citizens of San Bruno.

**BE IT FURTHER RESOLVED** that the City Council of the City of San Bruno approves the following changes to the Municipal Code.

Section 1. Section 3.18.010 (Imposition of tax.) of Chapter 3.18 (Cannabis Business Tax) of Title 3 (Revenue and Taxation Code) of the San Bruno Municipal Code is hereby amended to read as follows, with additions shown in underlined text, with all other provisions of Chapter 3.18 remaining unchanged:

**3.18.010 Imposition of tax.**

A. Every person engaged in a cannabis business in the city shall pay a cannabis business tax of ten percent of gross receipts.

**AMENDED 9/26/2022**

B. Beginning January 1, 2023, the tax rate for cannabis businesses shall be set at five percent of gross receipts of the cannabis business, unless further amended by the City Council. The City Council may, by further action, increase or lower the tax rate but in no event shall the tax rate be higher than ten percent of gross receipts.

Section 2. Chapter 6.58 (Medical Marijuana Distribution Facilities.) of Title 6 (Public Peace, Morals and Welfare) of the San Bruno Municipal Code is hereby deleted in its entirety.

Section 3. Section 6.59.010 (Definitions.) of Chapter 6.59 (Commercial Cannabis Activities) of Title 6 (Public Peace, Morals and Welfare) of the San Bruno Municipal Code is hereby amended in its entirety to read as follows, with all other provisions of Chapter 6.59 remaining unchanged:

“6.59.010 Definitions.

A. “Cannabis” (also referred to as “marijuana”) shall mean 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 division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

B. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products.

C. “Indoor cultivation” shall mean cultivation inside a fully enclosed private residence as defined in Health and Safety Code Section 11362.2(b)(2).

D. “Outdoor cultivation” shall mean any cultivation that is not defined as indoor cultivation as defined in Health and Safety Code Section 11362.2(b)(2).

Section 4. Section 6.59.020 (Prohibition of commercial cannabis activities.) of Chapter 6.59 (Commercial Cannabis Activities) of Title 6 (Public Peace, Morals and Welfare) of the San Bruno Municipal Code is hereby renamed as “Regulation of commercial cannabis activities” and is hereby amended to read as follows with additions shown in underlined text and deletions shown in strikethrough text, with all other provisions of Chapter 6.59 remaining unchanged:

“Section 6.59.020 Regulation of commercial cannabis activities.

Any commercial or industrial use involving ~~cannabis including, but not limited to,~~ the manufacture, processing, laboratory testing, ~~labeling, storing, and wholesale sale of cannabis,~~ distribution and retail is prohibited in every zoning district in the city. However, commercial cannabis uses involving retail (storefront sales) and distribution are allowed pursuant to the permitting provisions outlined in Municipal Code Chapters 4.70 and 12.300. It is unlawful for any person or entity to own, manage, conduct or operate any use involving commercial cannabis

activity except as expressly allowed in this section ~~as herein defined~~ or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any such prohibited activity in the city.

Section 5. A new Chapter 4.70 is hereby added to Title 4 (Licenses and Regulations) of the San Bruno Municipal Code to read as follows:

#### **“4.70 COMMERCIAL CANNABIS OPERATOR PERMIT**

##### **4.70.010 Purpose and intent.**

It is the purpose and intent of the City Council to regulate commercial cannabis operations consistent with state law and to protect the health, safety, and welfare of the residents of the city. The regulations in this chapter do not interfere with a qualified patient's right to obtain and use cannabis as authorized under state law, nor do they criminalize the possession or cultivation of cannabis by certain individuals as authorized under state law. Commercial cannabis operations shall comply with all provisions of the San Bruno Municipal Code, state law, and all other applicable local codes and regulations, including all applicable land use and zoning regulations imposed on commercial cannabis operations. It is neither the intent of this chapter to condone or legitimize the illegal use or consumption of cannabis under federal, state, or local law, nor to authorize the operation of a legal business in an illegal manner.

##### **4.70.020 Definitions.**

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

**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 division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

**Cannabis distribution facility** means a business that is authorized to engage in the distribution of cannabis and cannabis products without having a cannabis retailer component.

**Cannabis retailer** means any establishment which engages in the retail sale of cannabis for adult-use purposes.

**Cannabis Operator** means an interested person who has obtained a Commercial Cannabis Operators Permit and has a commercial cannabis operation.

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

**City Manager** means the city manager and/or their designee.

**Commercial cannabis activity** includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products.

**Commercial cannabis operation** means a cannabis retailer or cannabis distribution facility.

**Commercial Cannabis Operator Permit** or **permit** means a permit issued by the City of San Bruno pursuant to this chapter to a commercial cannabis operation.

**Conditional use permit** means a zoning approval issued by the City Council pursuant to the Zoning Code to a commercial cannabis operation.

**Day care center** has the same meaning as set forth in Section 1596.76 of the Health and Safety Code.

**Director** means the Director of Community and Economic Development.

**Distribution** means the procurement, sale, and transport of cannabis and cannabis products between State licensed cannabis businesses.

**Labor Peace Agreement** means an agreement in conformity with Business and Professions Code section 26051.5 whereby the cannabis business agrees not to oppose unionization and the union (who is attempting to organize the workforce) agrees to not strike or otherwise stop work.

**Manager** means a person or persons with responsibility for the establishment, registration, supervision, or oversight of the operation of a commercial cannabis operation, including, but not limited to, a person who performs the functions of a board member, director, officer, owner, operating officer, or manager of the commercial cannabis operation.

**MAUCRSA** means the Medicinal and Adult Use Cannabis Regulation and Safety Act, codified in Business and Professions Code section 26000 et seq., as the same may be amended from time to time.

**Park** means a playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or on City, county, or state parks. Park does not include small "pocket parks," such as Posy Park.

**Procedure Guidelines and Review Criteria** means the guidelines and criteria established by resolution of the City Council pursuant to Section 7.40.090 for the City's evaluation of cannabis operator permit applications.

**School** means any school providing instruction in kindergarten or any grades I through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).

**Sensitive uses** mean a day care center, park, school or youth center, as defined herein.

**Staff** means a person other than a manager who works or provides services on the site of a commercial cannabis operation, whether as an employee, contractor, or volunteer.

**Youth center** has the same meaning as Section 11353.1 of the Health and Safety Code that includes the following:

1. A public or private facility that is primarily used to host recreation or social activities for minors, including, but not limited to:
  - a. Private youth membership organizations or clubs,
  - b. Social service teenage club facilities,
  - c. Video arcades where 10 or more video games or game machines or

devices are operated, and where minors are legally permitted to conduct business, or

d. Similar amusement park facilities.

The public or private facility must be used for youth activities at least 60 percent of the time in a calendar year.

2. A youth center shall not include any private martial arts, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.

**4.70.030 Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.**

Except as specifically authorized by this Chapter, all commercial cannabis activity is expressly prohibited in the city.

**4.70.040 Compliance with State and Local Laws and Regulations.**

It is the responsibility of the owners of a commercial cannabis operation to ensure that the business operates in a manner compliant with this Chapter, all applicable state and local laws, and any regulations promulgated thereunder, including but not limited to the MAUCRSA.

**4.70.050 Evidence of Cannabis Operator Background Check Required.**

A. Any person who is an owner or manager of a commercial cannabis operation must be legally authorized to do so under applicable state law.

B. Commercial cannabis operation owners and managers shall be required to submit to a criminal background check.

C. The City shall conduct criminal background checks which must at a minimum identify the following:

- (1) Whether the owner has ever been convicted of a violent felony as defined by California Penal Code 667.5 or equivalent offenses in other states;
- (2) Whether the owner has ever been convicted of a felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; or
- (3) Whether the owner has ever been convicted of a felony for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

D. Evidence of a conviction of any the offenses enumerated above shall be grounds for denial of a cannabis operator permit.

**4.70.060 Persons Prohibited from Holding a Cannabis Operator Permit.**

A. Any person, including but not limited to 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, shall not be eligible to obtain a cannabis operator permit from the City if any of the following apply:

- (1) A criminal background check demonstrates the applicant has committed any of the crimes identified in Section 7.40.050(C);
- (2) The applicant has been denied a cannabis license or permit, or has had a cannabis license or permit suspended or revoked by any city, county, city and county or any other state cannabis licensing authority, except if a license or permit was denied due to the fact that a limited number of licenses or permits were issued by a local jurisdiction;
- (3) In the past five years, the applicant was notified by the state, county, or city that it was conducting commercial cannabis activity in violation of City ordinances, codes, and requirements, and failed to cure the violation in a timely manner;
- (4) Evidence that the applicant is delinquent in payment of federal, state, or local taxes and/or fees, and took no steps to cure the delinquency when notified by the appropriate agencies;
- (5) The applicant, or any of the officers, directors, owners, managers, or employees of the commercial cannabis operation is under twenty-one (21) years of age;
- (6) The applicant, or any of the commercial cannabis operation's officers, directors, or owners, or any person who is managing or is otherwise responsible for the activities of the commercial cannabis operation, has been convicted of a violent felony, a felony or misdemeanor involving fraud, deceit, embezzlement, or moral turpitude;
- (7) The applicant or any of the commercial cannabis operation's officers, directors, owners, or managers is a licensed physician making patient recommendations for cannabis; or
- (8) The applicant did not pay to the City the required application and processing fees.

**4.70.070 Maximum Number of Authorized Cannabis Operators Permitted.**

A maximum of four commercial cannabis operations shall operate in the City, with any combination of cannabis retailers (up to three) or cannabis distribution facilities (up to one) as long as the total number does not exceed four.

**4.70.080 City's Reservation of Rights.**

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

- A. The application was received after the designated time and date of the deadline.
- B. The application did not contain the required elements, exhibits, or was not organized in the required format.
- C. The application did not provide all the information required in the permit application (*i.e.*, was substantially incomplete).
- D. The applicant did not comply with the requirements of this Chapter.

**4.70.090 Procedure Guidelines and Review Criteria to Evaluate Cannabis Operator Applications.**

- A. By resolution, the City Council shall adopt Procedure Guidelines and Review Criteria for the City's evaluation of cannabis operator permit applications.
- B. The Procedure Guidelines and Review Criteria shall provide the process for soliciting applications including time frames, limitations, requirements, forms, and rules for completing applications.
- C. The City Manager shall be authorized to prepare any necessary forms and adopt any necessary rules or procedures to implement the Procedure Guidelines and Review Criteria.
- D. At the time of filing, each applicant shall pay an application fee established by resolution of the City Council to cover all costs incurred by the City in the application process.
- E. For applicants with 20 or more employees, the applicant shall attest that the applicant will enter into a labor peace agreement and will abide by the terms of the agreement, and the applicant shall provide a copy thereof to the City. For applicants that have not yet entered into a labor peace agreement, the applicant shall provide a notarized statement indicating that within 30-days of issuance of a cannabis operator permit from the City, the applicant will enter into and abide by the labor peace agreement.



**4.70.100 Application Review Process.**

A. Applications will be reviewed as provided in the Procedure Guidelines and Review Criteria.

B. The Community Development Director, or their designee, shall verify whether a proposed business location is properly zoned to allow a commercial cannabis operation to operate at the location. The Community Development Director, or their designee, shall also verify that the proposed business location meets the separation requirements from sensitive uses set forth in Municipal Code Section 12.300.070.

C. Only approved applications meeting guidelines set by City Council resolution will be eligible to participate in the final selection process which includes applying for a cannabis conditional use permit.

D. Applications shall be vetted by the City Manager and a team of his/her choice consistent with Procedure Guidelines and Review Criteria. At the conclusion of the vetting process, businesses will be issued a “pass” or “fail,” and those eligible businesses with a “pass” will **advance to the City Council to determine which businesses will** be permitted to apply for a conditional use permit.

E. The City Manager shall not issue a cannabis operator permit to an applicant until the applicant has obtained a conditional use permit pursuant to Municipal Code Chapter 12.300.

**4.70.110 Exercise of a Cannabis Operator Permit.**

A. Each cannabis operator permit issued pursuant to this Chapter shall expire twelve (12) months after the date of issuance. A cannabis operator permit may be renewed as provided in Section 7.40.130.

B. A cannabis operator permit shall be exercised within twelve (12) months of issuance. A cannabis operator permit has been exercised when any of the following occur:

- (1) A certificate of occupancy has been issued,
- (2) The permitted use has commenced on the site, or
- (3) A City building permit or grading permit is secured, and construction lawfully commenced.

**4.70.120 Scope of Approval.**

A. If a location has not been in regular and continuous operation in the preceding four (4) months, it shall be considered abandoned unless a mitigating circumstance occurred which was beyond the control of the permittee and the City Manager has authorized an extension.

B. The approval of a new use shall terminate all rights and approvals of a cannabis operator occupying the same site or location.



**4.70.130      Renewal of Cannabis Operator Permit.**

- A.      An application for renewal of a cannabis operator permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- B.      The renewal application shall contain all the information required for new applications, or as otherwise required by the City Manager.
- C.      The applicant shall pay a fee in an amount to be set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- D.      An application for renewal of a permit shall be rejected if any of the following exists:
- (1)      The application is filed less than sixty (60) days before its expiration or a shorter time period which shall be at the discretion of the City Manager.
  - (2)      The permit is suspended or revoked at the time of the application.
  - (3)      The permittee has not been in regular and continuous operation in the four (4) months prior to the renewal application or the approved extension of the deadline from the City Manager.
  - (4)      The permittee has failed to comply with the requirements of the permit, this Chapter, any regulations adopted pursuant to this Chapter, any conditions of approvals for the permit, or any conditions of approval for land use approvals in connection with the permit.
  - (5)      The permittee fails or is unable to renew its State of California license.
  - (6)      If the State has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of the state rules and regulations and the state has determined that the violation is grounds for termination or revocation of the cannabis regulatory permit.
  - (7)      The permittee has failed to pay any City taxes or fees.
- E.      The City Manager is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the City Manager is authorized to impose additional conditions on a renewal permit, if the City Manager determines such conditions to be necessary to ensure compliance with State or local laws and regulations or to preserve the public health, safety, or welfare.

**4.70.140      Revocation of a Cannabis Operator Permit.**

A cannabis operator permit may be revoked for any violation of any state or local laws, this Municipal Code, rules, standards, policies, procedures, regulations, or conditions of approval

related to cannabis in this Chapter or adopted pursuant to this Chapter, and any violation of any conditions of approval of a land use entitlement issued to the cannabis operator.

**4.70.150 Effect of State License Suspension or Revocation.**

A. Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a commercial cannabis operation to operate within the City until the State of California or its respective department or division reinstates or reissues the State license.

B. Revocation of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a commercial cannabis operation to operate within the City until the State or its respective department or division takes appropriate action. Should the State revoke a license, the owner of the commercial cannabis operation may re-apply for a cannabis operator permit at such time as it can demonstrate that the grounds for revocation of the license by the State no longer exist or that the underlying deficiency has otherwise been cured.

**4.70.160 Appeals.**

A. Appeals relating to (1) denial of an initial application; (2) denial of advancement to apply for a conditional use permit; (3) revocation or suspension of a permit; (4) denial of renewal of an application for a permit; or (5) additions of conditions to a permit shall be conducted as prescribed in this Chapter.

B. Within ten (10) calendar days after the date of a decision of the City Manager to revoke, suspend or deny an initial or renewed permit application or to add conditions to a permit, an applicant or permittee may appeal such action by filing a "Notice of Appeal" with the City Clerk setting forth the reasons why the decision was not proper.

C. The Notice of Appeal shall be in writing and signed by the person making the appeal ("appellant"), or their legal representative, and shall contain the following:

- (1) Name, address, and telephone number of the appellant.
- (2) Include a true and correct copy of the decision issued by the City Manager for which the appellant is appealing.
- (3) State with specificity the reasons and grounds for making the appeal, including, but not limited to, a statement of facts upon which the appeal is based in sufficient detail to enable the City Council, or any appointed hearing officer, to understand the nature of the controversy, the basis of the appeal, and the relief requested.
- (4) All documents or other evidence pertinent to the appeal that the appellant requests the hearing officer or body to consider at the hearing.

(5) An appeal fee as established by resolution of the City Council.

D. An appointed hearing officer or the City Council will hear appeals that address the following issues:

- (1) Denial of an application for a cannabis operator permit.
- (2) Any deviation from the City's published Procedure Guidelines and Review Criteria that adversely affected the applicant by altering the outcome of the City's decision on the applicant's application. Examples of appealable deviations are:
  - (a) Failure on the part of the City to provide appropriate notification regarding changes to the application process via website postings or email to the applicant prior to the time the application was submitted;
  - (b) Failure on the part of the City to provide an applicant an equal opportunity to modify an application where that opportunity was provided to other applicants;
- (3) Revocation or suspension of permit;
- (4) Conditions imposed on a permit.

E. Any appeal based upon this section must be supported by evidence that the applicant presented the relevant information with completeness and in the appropriate section of the application. Information presented in the application that is incomplete in nature or that is relevant to a question posed by the City on the application form but appears in the incorrect section, even if complete, may be grounds for the dismissal of the appeal.

F. Failure of the City Clerk to receive a timely appeal constitutes a waiver of the right to appeal the notice issued by the City Manager. In this event, the City Manager's notice of decision shall be final.

G. In the event a written Notice of Appeal is timely filed, the nonrenewal, suspension, revocation shall not become effective until a final decision has been rendered and issued by the City Council or appointed hearing officer. Notices of appeal not served in a timely manner or served by non-operational business shall not serve to allow such business to operate pending appeal.

H. If no appeal is timely filed in the event of a decision of nonrenewal, the cannabis operator's permit shall expire at the conclusion of the term of the permit. If no appeal is timely filed in the event of a decision supporting suspension or revocation, the suspension or revocation shall become effective upon the expiration of the period for filing a written Notice of Appeal.

**4.70.160      Administrative Hearing and Proceedings.**

- A.      Review by Hearing Officer or Body; Administrative Hearing and Proceedings.
- (1)      Appellants who file a timely written Notice of Appeal will be entitled to an administrative hearing before a hearing officer or City Council as set forth by the City Council by resolution.
  - (2)      Upon receipt by the City Clerk of a timely-filed Notice of Appeal pertaining to suspensions, revocations, or non-renewals of a permit the City Clerk shall forward such appeal to the City Council or hearing officer who shall schedule a hearing within thirty (30) days. In the event such hearing cannot be heard within that time period or a mutually agreed upon time with the appellant, then the City Clerk shall schedule the appeal to be heard within forty-five (45) days or as soon as reasonably possible.
  - (3)      The appellant listed on the written Notice of Appeal shall be notified in writing of the date, time, and location of the hearing at least ten (10) days before the date of the hearing.
  - (4)      A request by an appellant or by the City to continue a hearing must be submitted to the City Clerk in writing no later than three (3) business days before the date scheduled for the hearing. The appointed hearing officer or City Council may continue a hearing for good cause or on its own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days, unless there is a stipulation by all parties to do so.
- B.      At the date, time and location set forth in the Notice of Appeal hearing, the City appointed hearing officer or body shall hear and consider the testimony of the appellant, City staff, and/or their witnesses, as well as any documentary evidence properly submitted for consideration.
- C.      The following rules shall apply at the appeal hearing:
- (1)      Appeal hearings are informal, and formal rules of evidence and discovery do not apply. However, rules of privilege shall be applicable to the extent they are permitted by law, and irrelevant, collateral, undue, and repetitious testimony may be excluded.
  - (2)      The City bears the burden of proof to establish the grounds for nonrenewal, suspension or revocation by a preponderance of evidence. Appellant(s) bear the burden of proof regarding denial of an applicant's application, or denial of permit.
  - (3)      The issuance of the City Manager's notice constitutes prima facie evidence of grounds for the denial, nonrenewal, suspension or revocation.

- (4) The hearing officer or City Council may accept and consider late evidence not submitted initially with the Notice of Appeal upon a showing of good cause. The hearing officer or body shall determine whether a particular fact or set of facts amount to good cause on a case-by-case basis.
- (5) The appellant may bring a language interpreter to the hearing at their sole expense.
- (6) The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording. If the appellant requests from the City that a court reporter, stenographer, or videographer be used, appellant shall bear the costs of same and shall deposit such fees prior to commencement of the administrative hearing.
- (7) If the appellant, or their legal representative, fails to appear at the appeal hearing, the appointed hearing officer or City Council, may cancel the appeal hearing and send a notice thereof to the appellant by certified, first class mail to the address(es) stated on the Notice of Appeal. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal and a failure to exhaust all administrative remedies. In such instances, the City Manager's notice of decision is final and binding.

D. Final Decision. Following the conclusion of the administrative hearing, the appointed hearing officer or City Council shall issue a written decision within thirty (30) days that determines if the action appealed from is affirmed or overturned and specifies the reasons for the decision.

E. The written decision of the appointed hearing officer or City Council shall provide that it is final and conclusive and is subject to the time limits set forth in California Code of Civil Procedure Section 1094.6 for judicial review.

F. A copy of the written decision shall be served by certified, first-class mail on the appellant. If the appellant is not the owner of the real property in which the commercial cannabis operation is located, or proposed to be located, a copy of the final decision may also be served on the property owner by first class mail to the address shown on the last equalized assessment roll. Failure of a person to receive a properly addressed final decision shall not invalidate any action or proceeding by the City pursuant to this Chapter.

#### **4.70.170 Transfer of Cannabis Operator Permit.**

A. A cannabis operator shall not transfer ownership or control of the permit to another person or entity unless and until the transferee obtains an amendment to the permit from the City Manager stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Manager in accordance with the provisions of this Chapter (as though the transferee were applying for an original cannabis operator permit). The proposed transferee's application shall be accompanied by a transfer fee

in an amount set by resolution of the City Council (or if not set, shall be the same amount as the application fee). The transferee's application will be treated as a new application, and will be evaluated according to the Procedure Guidelines and Review Criteria.

B. A cannabis operator permit issued through the grant of a transfer by the City Manager shall be valid for a period of one year beginning on the day the City Manager approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit and pay the appropriate fee in the manner required by this Chapter.

C. A cannabis operator permit shall not be transferred when the City has notified the permittee in writing that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a cannabis operator permit either directly or indirectly in violation of this section is hereby declared a violation of the permit and this chapter. Such a purported transfer shall be deemed a ground for revocation of the permit.

#### **4.70.180 Right to Occupy and to Use Property.**

Prior to the City's issuance of a cannabis operator permit pursuant to this Chapter, any person intending to open and to operate a commercial cannabis operation shall first provide sufficient evidence of the legal right to occupy and to use the proposed location. If the proposed location will be leased from the property owner, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this Chapter and consents to the operation of the commercial cannabis operation on the owner's property.

#### **4.70.190 Records and Record Keeping.**

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

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

**AMENDED 9/26/2022**

C. All commercial cannabis operations shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing processes until purchase as set forth in the MAUCRSA.”

Section 6. This ordinance is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) because it is not a project and there is not a possibility that the ordinance may have a significant effect on the environment.

Section 7. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of San Bruno hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 8. This Ordinance shall take effect and be in force 30 days after its adoption.

Section 9. The City Clerk shall publish this Ordinance according to law.

ATTEST:

\_\_\_\_\_  
Rico E. Medina, Mayor

\_\_\_\_\_  
Vicky Hasha, Deputy City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Trisha Ortiz, Interim City Attorney



**AMENDED 9/26/2022**

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I hereby certify that the foregoing Ordinance No.  
\_\_\_\_\_ was introduced on \_\_\_\_\_, 2022, and  
adopted at a regular meeting of the San Bruno City  
Council on \_\_\_\_\_, 2022, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

RECUSE: COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
Vicky Hasha, Deputy City Clerk