



# Staff Report

Agenda Item No.

**D-1**

**To:** City of Imperial Planning Commission

**By:** Lisa Tylanda, Planner

**Date:** November 17, 2017

**Subject: Review Draft Medical Cannabis Ordinance**

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## **Recommended Action**

Staff recommends that the Planning Commission review and recommend or amend the proposed Draft Medical Cannabis Ordinance for the City of Imperial.

## **Background**

The City of Imperial currently has the following Ordinances relating to Cannabis activities in place:

- 766: An ordinance relating to medical marijuana dispensaries.
- 788: An interim urgency ordinance imposing a temporary moratorium on commercial and industrial cannabis activities.
- 793: An ordinance regulating personal indoor cultivation of marijuana, banning outdoor personal cultivation and banning marijuana use in city facilities.

The State of California has been involved with cannabis (marijuana) since 1996 with the passage of Proposition 215 the "Compassionate Use Act," the first medical cannabis regulation in the United States. In 2003, Senate Bill 420, developed the medical marijuana identification cards. The next significant change in regulation came twelve years later in 2015.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, was signed by the Governor on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also establishes a dual licensing scheme under which anyone engages in commercial cannabis activity must first obtain a local permit, anti then a state license. The state law defers to local land use authority and local jurisdiction may ban cannabis uses altogether or further limit the allowances under state law.

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Adult Use of Marijuana Act ("AUMA"). AUMA would allow local jurisdictions to decide whether to allow nonmedical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations. The proposed Ordinance only pertains to medical cannabis, consistent with current state law under MCRSA.

On June 27, 2017, the Governor signed into law, Senate Bill (SB) 94, which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provision of the AUMA, and created a signal regulatory scheme for both

medical and no-medical cannabis known as the **Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA")**. The MAUCRSA retain the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Provisions Code Section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction.

Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provision of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018.

### **State Law and Licensing Requirements**

Legislation under the Medical Cannabis Regulation and Safety Act (MCRSA) protects local control via dual licensing: all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban. Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency. The types of permits allowed under the MCRSA including commercial cultivation, dispensaries, manufacturing, testing labs, transporters, and distributors. Delivery services may occur if permitted by the local agency (or if the local jurisdiction does not explicitly prohibit delivery services) and must be associated to a dispensary.

### **Land Use Subjects**

The following items should be addressed in an ordinance that deals with cannabis related businesses:

1. Definitions for uses, activities, etc.
2. Permissive zoning vs. explicit bans.
3. Permitted zones.
4. Public hearing and noticing requirements.
5. Separation requirements from sensitive uses such as parks, schools, day cares and other marijuana related uses.
6. Parking requirements.
7. Hours of operation.
8. Signage and on-site advertisements.

Attachments:

Draft Medical Cannabis Ordinance for review.



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

**AN ORDINANCE OF THE CITY OF IMPERIAL AMENDING  
THE CODIFIED ORDINANCES TO PROVIDE FOR  
MEDICINAL CANNABIS DISPENSARIES**

The City Council of the City of Imperial does ordain as follows:

Section 1: Article XII (Regulation of Marijuana Under Proposition 64) is hereby renumbered to be Article XIII.

Section 2: Article XII (Medical Marijuana Dispensaries) is hereby repealed and reenacted to read as follows:

Chapter 15, Article XII  
Medical Cannabis Dispensaries

- Section 15-85.1. Definitions.
- Section 15-85.2. Business Permit Required.
- Section 15-85.3. On-Site Consumption Permit.
- Section 15-85.4. Regulations.
- Section 15-85.5. Performance and Operating Standards.
- Section 15-85.6. Regulatory Fees; Seller's Permit.
- Section 15-85.7. Sales.
- Section 15-85.8. Revocation, Suspension and Appeals.
- Section 15-85.9. Prohibited Operations; Nonconforming Uses.
- Section 15-85.10. Liability and Indemnification.
- Section 15-85.11. Examination of Books, Records, Witnesses-Penalty.

15-85.1. Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

- (a). "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code Section 19300.5(f), as may be amended, which, as of March 2016, defines "cannabis" as 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 marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code Section 11018, "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 seeds of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(b). "Cannabis dispensary" or "Dispensary" shall mean a facility where medical 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 that delivers medical cannabis and medical cannabis products as part of a retail sale.

(c). "City Manager" means the City Manager of the City of Imperial or his/her designee.

(d). "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitate the collaborative efforts of qualified patients and primary caregivers, as described in State law.

(e) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(f). "Delivery only dispensary" means a cannabis dispensary that provides medical cannabis or medical cannabis products to primary caregivers or qualified patients as defined in Section 11362.7 of the Health and Safety Code exclusively through delivery.

(g). "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health and Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

(h). "Parcel of land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

(i). "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, which, as of March 2016, defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)-(3).

(j). "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

(k). "Smoking" shall have the same definition as in the Imperial Municipal Code which as of March 2016 includes "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

(l) "Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.

(m). "General Application permit" shall mean all applications issued under the Imperial Municipal Code.

15-85.2. Business permit required and application for permit.

(a). Except for hospitals, research facilities, or an entity authorized pursuant to this Ordinance, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance

with the provisions of this Ordinance and a permit issued under this Chapter. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a permit under this Ordinance, but must comply with applicable State law.

(b). The City Manager shall issue no more than                      new valid permits for the operation of dispensaries in the City per year. Delivery only dispensaries shall not be subject to this limit.

(c). In addition to the requirements specified in this Ordinance for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Manager in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), or youth center. The proposed dispensary or delivery only dispensary must be located in a zone designated as C-2 by the City Ordinance, or its equivalent as may be amended, of the City. In addition to the other requirements of this Ordinance, a dispensary must also obtain a conditional use permit.

2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent

with State law and the provisions of this Chapter, including but not limited to:

- i. Controls to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and
  - ii. Controls to acquire, possess, transport and distribute marijuana to and from State-licensed medical cannabis entities.
3. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law. The security plan shall be reviewed by the Police Department and the Office of the City Manager and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
4. Confirmation of the following criteria:
- i. That the dispensary or delivery only dispensary will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;
  - ii. That the dispensary or delivery only dispensary will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
  - iii. That the dispensary or delivery only dispensary will not interfere with the movement of people;
  - iv. That the dispensary or delivery only dispensary will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;
  - v. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression. All proposed signs and methods of on-site advertisement are to be formally submitted via application to the Community Development Department. All proposed signs and methods of on-site advertisement will be reviewed by the Development Review Committee and then taken to the Planning Commission for final approval;
  - vi. That adequate litter receptacles will be provided where appropriate;
  - vii. That where the dispensary or delivery only dispensary is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep;
  - viii. That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Manager to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

(d). Applications for dispensaries shall be subject to a hearing and must provide public notice of the hearing in accordance with City Ordinance. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City Manager shall be the investigating official referred to in this Ordinance to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Manager's discretion he/she deems necessary to the peace, order and welfare of the public. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Fee Schedule.

(e). At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set in the City's Fee Schedule.

#### 15-85.3 Onsite consumption permit.

(a). An applicant must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.

(b). An onsite consumption permit may be issued at the discretion of the City Manager to a dispensary in good standing following a public hearing conducted according to the requirements of this Ordinance. The City Manager shall take into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this Chapter, and/or any violation of State or local law relevant to the operation of dispensaries.

(c). The City Manager shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drug driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Manager's Office.

(d). The permit shall be subject to suspension or revocation in accordance with this Ordinance, and the owner/operator shall be liable for excessive police costs related to enforcement.

(f). The application fee and annual fee for the onsite consumption permit shall be specified in the City's Fee Schedule.

(g). All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Manager subject to this Ordinance.

#### 15-85.4. Regulations.

The City Manager shall establish administrative regulations for the permitting of dispensaries and delivery only dispensaries, and may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law, the City Manager's administrative regulations, and this Chapter.



#### 15-85.5. Performance and operating standards.

The City Manager shall develop and implement performance and operating standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Manager Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety.

Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Manager's determination.

The following performance standards shall be included in the City Administrative regulations:

- (a). No cannabis shall be smoked inside the premises of the dispensary.
- (b). The dispensary 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.
- (c). Dispensaries and delivery only dispensaries must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Manager upon request.

#### Section 15-85.6. Regulatory fees; seller's permit.

(a). In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to this Ordinance together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this Chapter and ~~this Ordinance~~ in a conspicuous place in the premises approved as a dispensary at all times.

(b). The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

(c). The fees referenced herein shall be set by the Fee Schedule, as modified from time to time.

#### 15-85.7. Sales.

Retail sales of medical marijuana that violate California law or this Ordinance are expressly prohibited.

#### 15-85.8. Revocation, suspension and appeals.

Any decision by the City Manager, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations the City shall follow the procedures set forth in the City Ordinance involving appeals to City Council related to conditional use permits. Such request for appeal must be made in writing within fourteen (14) days of the City Manager's decision. The decision of the City Council shall be final and conclusive.

15-85.9. Prohibited operations; nonconforming uses.

(a). All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., 11362.5, and this Chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, 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 dispensary or during the delivery of medical cannabis.

(b). No use which has not been duly permitted under this Ordinance shall be deemed to have been a legally established use under the provisions of the Imperial Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

(c). Any violations of this Chapter, including administrative regulations authorized by this Chapter, may be subject to administrative citation and other applicable legal, injunctive or equitable remedies.

~~15-85.10.~~ Liability and indemnification.

(a). To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

(b). To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Imperial, the Imperial City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul any medical cannabis related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

(c). Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection B. above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the City.

Section 15-85.11. Examination of books, records, witnesses-Penalty.

(a). Permittees must provide the City Manager with access to any licensed dispensary during normal business hours to verify compliance with this Chapter.

(b). Permittees must provide the City Manager with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under this Ordinance and/or gross receipts tax requirements.

(c). The City Manager is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

(d). The City Manager is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City Manager may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

(e). Every permittee is directed and required to furnish to the City Manager, the means, facilities and opportunity for making such financial examinations and investigations.

(f). Any permittee refusal to comply with this section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

Section 3. Article XII.1 of Chapter 15 is hereby enacted to read as follows:

#### Chapter 15, Article XII.1

#### MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS

Section 15-85.12. Findings and Purpose.

Section 15-85.13. Definitions.

Section 15-85.14. Permit Required.

Section 15.85.15. Cultivation, Distribution, Testing and Transporting of Medical Cannabis

Section 15.85.16. Application for Permit

Section 15.85.17. Operating and Performance Standards.

Section 15.85.18. Examination of Books, Records, Witnesses-Information Confidential-Penalty

Section 15.85.19. Liability and Indemnification.

#### 15-85.12. Findings and purpose.

(a). The City Council finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City could cause impacts to the community. These impacts could include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts could disproportionately on residential neighborhoods. These impacts could create an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

(a). The City Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Imperial.

(b). The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(c). The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

(d). The primary purpose and intent of this Chapter is to regulate non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

#### 15-85.13 Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

(a). "Applicant" as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.

(b). "Batch" as used only in this Chapter shall be defined by the City Manager to mean a discrete quantity of dried cannabis produced and sold together.

(c). "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance.

(d). "Cannabis concentrate" as used only in this Chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.

(e). "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance and is also referred to herein as "dispensary."

(f). "City Manager" as used only in this Chapter shall mean the City Manager for the City of Imperial and his or her designee.

(g). "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than forty-eight (48) ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than ninety-six (96) square feet of total area within one parcel of land.

(h). "Distribute" as used only in this Chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between State licensed medical cannabis entities.

(i). "Edible cannabis product" as used only in this Chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

(j). "Manufactured cannabis" as used only in this Chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

- (k). "Manufacture" as used only in this Chapter shall mean to produce, prepare, propagate, or compound manufactured 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.
- (l). "Medical cannabis collective" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- (m). "Medical marijuana" or "Medical cannabis" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance.
- (n). "Parcel of land" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance.
- (o). "Permittees" as used only in this Chapter are individuals or businesses that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.
- (p). "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance.
- (q). "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as is defined in this Ordinance.
- (r). "Testing" as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
- (s). "Topical cannabis" as used only in this Chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.
- (t). "Transport" as used only in this Chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by State law.
- (u). "Transporter" as used only in this Chapter means a person licensed to transport medical cannabis or medical cannabis products between State licensed medical cannabis facilities.
- (v). "Volatile solvents" as used only in this Chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Imperial Fire Department.

15-85.14. Permit required.

- (a). Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.
- (b). The City Manager shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

- (c). All cultivation, distribution, manufacturing, testing and transporting permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Manager subject to his/her discretion.
- (d). Cultivation, distribution, manufacturing, testing, and transporting permits shall only be granted to entities operating legally according to State law.
- (e). More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.
- (f). No proposed use under this Chapter shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Manager in his/her discretion determines that the location will not impact the peace, order and welfare of the public.

~~15-85.15~~ 15. Cultivation, distribution, testing and transporting of medical marijuana.

- (a). Proposed cultivation, distribution, testing or transporting locations shall be in areas where "light manufacturing industrial," "research and development," or their equivalent use, is permitted by right under the Imperial Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting facility permittee.
- (b). The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location if the City Manager in his/her discretion determines that the location will not impact the peace, order and welfare of the public.
- (c). The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

15-85.15. Manufacturing of medical marijuana.

- (a). Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Imperial Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.
- (b). Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where C-2, or its equivalent use, is permitted by right pursuant to an appropriate overlay zone or other designation under the Imperial Zoning Code, as may be amended.

15-85.16. Application for permit.

- (a). All applicants shall pay an application fee as specified in the Fee Schedule.
- (b). All applicants shall submit written information to the City Manager that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non-diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Manager. The City Manager may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.
- (c). The City Manager shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.
- (d). All applicants shall demonstrate compliance with State law, during the course of the permit application procedure described under this section, prior to issuing any permit, and upon the issuance of a permit, thereafter.

15-85.17. Operating and performance standards.

- (a). Facilities permitted under this Chapter shall not be open to the public. The City Manager shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.
- (b). The following standards shall be included in the City Manager's regulations:
  - 1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
  - 2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Imperial Police Department.
  - 3. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Manager upon request.
- (c). Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Manager's determination.

15-85.18. Examination of Books, Records, witnesses-Information Confidential-Penalty

- (a). The City Manager shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this Chapter.
- (b). The City Manager shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under this Ordinance and/or gross receipts tax requirements.

(c). The City Manager is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

The City Manager is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City Manager may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

(d). Every permittee is directed and required to furnish to the City Manager, the means, facilities and opportunity for making such financial examinations and investigations.

(e). Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

~~15-85.19.~~ Liability and indemnification.

(a). To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

(b). To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Imperial, the Imperial City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and strictly comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

(c). Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection (b) above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the City.



Section 4: Effective Date. This ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor of the City of Imperial

**ATTEST:**

\_\_\_\_\_  
City Clerk