

ORDINANCE NO. 1785 N.C. (2d)

AN EMERGENCY ORDINANCE AMENDING CHAPTER 7.100 OF THE VALLEJO MUNICIPAL CODE ON MARIJUANA BUSINESS TO PERMIT SALES AND DELIVERY OF RECREATIONAL MARIJUANA BY THE ELEVEN PERMITTED MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the Compassionate Use Act adopted by voters in 1996, and the Medical Marijuana Program Act, enacted by the state legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes including to ensure that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes are not subject to state criminal prosecution; and

WHEREAS, in November 2011, City of Vallejo voters passed Measure C, a marijuana business tax-revenue ordinance which provides that payment of a business license tax and its acceptance by the City shall not entitle any person to carry on a marijuana business in a zone or locality in which the conduct of such marijuana business is in violation of any law; and

WHEREAS, the zoning ordinance of the City of Vallejo does not allow marijuana dispensaries as a use, which renders any such use an illegal public nuisance per se; and

WHEREAS, before the passage of Chapter 7.100, according to police sightings, neighborhood complaints, and internet information, more than 40 marijuana businesses were operating in the City of Vallejo without any land use approval under the Vallejo Municipal Code, and an unknown number of businesses continued to open, close, and reopen in Vallejo with no regulatory authorization from the City; and

WHEREAS, in July 2015, Chapter 7.100 was added to the Vallejo Municipal Code; and

WHEREAS, neither permits of any kind, nor fire inspections, nor payment of taxes in any way bestows a legal right to use land for a medical marijuana dispensary; and

WHEREAS, the City recognizes that providing permits to applicants for certain specified marijuana activity is harmonious with state law and regulations regarding marijuana activity, including but not limited to the Medical Marijuana Regulation and Safety Act of 2015 and later amendments to the Act, later repealed and partly reenacted through the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017; and

WHEREAS, in August 2017, Chapter 7.100 was amended to authorize issuance of a permit to each medical marijuana dispensary that had been issued a letter of limited immunity; and

WHEREAS, the City Charter at Section 316 provides that no ordinance shall become effective until 30 days after adoption, with the exception of an emergency ordinance adopted in the manner provided by the Charter; and

WHEREAS, the City Charter at Section 312 provides that any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety and containing a statement of the reasons for its urgency may be introduced and adopted at the same meeting if passed by at least five affirmative votes; and

WHEREAS, the state legislature passed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in June 2017 and minor amendments through AB 133 in September 2017, which set forth a state licensing framework for commercial marijuana activity and deeming the activity permitted by state license not unlawful so long as permitted pursuant to local authorization; and

WHEREAS, MAUCRSA required state licensing agencies to begin issuing state licenses by January 1, 2018, and provides that the state licensing agencies may adopt emergency regulations which shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare; and

WHEREAS, the state licensing agencies issued emergency regulations on November 16, 2017, and the Office of Administrative Law issued its final decision on the adoption of the regulations before January 1, 2018; and

WHEREAS, the City of Vallejo has provided permits authorizing medical marijuana dispensaries to operate in the City, and has authorized permitting the dispensaries to engage in medical cultivation, distribution, and manufacturing pursuant to local requirements; and

WHEREAS, the City Council finds that immediate adoption of requirements for delivery of medical and adult-use marijuana and permitting adult-use marijuana dispensing will increase protection of the public and the environment from the harms associated with an unregulated commercial marijuana market and prevent access to marijuana by persons under age 21 who do not possess a valid physician's recommendation; and

WHEREAS, the City Council finds that immediate adoption of the ordinance and making the ordinance effective February 28, 2018, is necessary for the preservation of the public peace, health and safety.

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

SECTION 1. Vallejo Municipal Code Chapter 7.100 is hereby amended to read as follows:

Chapter 7.100 Marijuana

7.100.010	<u>Purpose and Intent</u>
7.100.020	<u>Definitions</u>
7.100.030	<u>No Authority to Permit Marijuana Dispensary Use in Any Zone; Unlawful to Distribute Marijuana; Unlawful to Make False Statements</u>
7.100.040	<u>No Vested or Nonconforming Rights</u>
7.100.050	<u>Permit to Operate Medical Marijuana Dispensary, Recreational Marijuana Dispensary</u>
7.100.055	<u>Delivery</u>
7.100.060	<u>Location</u>
7.100.070	<u>Prohibited Activity</u>
7.100.080	<u>Requirements and Proof of Compliance</u>
7.100.085	<u>Revocation of Permit</u>

- 7.100.088 Appeal
- 7.100.090 Operating Conditions
- 7.100.100 Prohibition Against Transfer or Relocation
- 7.100.110 Maintenance of Records
- 7.100.120 Inspection Authority
- 7.100.130 Public Nuisance
- 7.100.140 Enforcement

7.100.010 Purpose and Intent.

It is the purpose and intent of this chapter to address the proliferation of Marijuana Dispensaries and exercise local police power and authority to the full extent allowed by the California Constitution and Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017. This ordinance is not intended to conflict with federal or state law. Nothing in this ordinance purports to permit activities that are otherwise illegal under federal, state, or local law.

7.100.020 Definitions.

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

"City" means the City of Vallejo, and any legislative body granted regulatory authority over Marijuana Dispensary operations or any other marijuana business by this ordinance.

"City Manager" means the City Manager of the City of Vallejo or his/her designee.

"Manager" means a Marijuana Dispensary person with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Marijuana Dispensary, including but not limited to persons who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Marijuana Dispensary.

"Marijuana" has the same meaning as cannabis, cannabis concentrate, cannabis products, and edible cannabis product as defined in California Business & Professions Code Section 26001.

"Marijuana Dispensary" means a Medical Marijuana Dispensary or Recreational Marijuana Dispensary.

"Medical marijuana" means marijuana or a marijuana product intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health & Safety Code, by a medical marijuana patient who possesses a physician's recommendation or identification card.

"Medical Marijuana Dispensary" is any storefront that dispenses, sells, makes available, or distributes Marijuana for medicinal purposes that requires a license pursuant to MAUCRSA (e.g. Microbusiness license), and any association, collective or cooperative that sells, makes available or distributes Marijuana for medicinal purposes pursuant to Health & Safety Code Section 11362.775 until that section is repealed pursuant to Section 11362.775(e). Medical Marijuana Dispensary does not include the donation or provision of medical Marijuana meeting the requirements of

MAUCRSA at California Business & Professions Code Section 26033 for an exemption from state licensure.

“Recreational Marijuana Dispensary” is any storefront that dispenses, sells, or makes available Marijuana to another person or entity.

“Property” as used in this chapter means the location at which the Medical Marijuana Dispensary members, employees, volunteers or agents distribute Marijuana.

The following words or phrases when used in this Chapter shall be construed as defined in the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 and regulations promulgated by the state implementing agencies: “Attending Physician,” “Distribution,” “Identification Card,” “Physician’s Recommendation,” “Primary Caregiver,” “Qualified Patient.”

7.100.030 No Authority to Permit Marijuana Dispensary Use in Any Zone; Unlawful to Distribute Marijuana; Unlawful to Make False Statements.

A. The use of any building, structure, location, premises or land for a Marijuana Dispensary is not currently enumerated in the Vallejo Municipal Code’s zoning ordinance as a permitted use in any zone. The Marijuana Dispensary land use is therefore not allowed. So long as this chapter remains in effect, the planning manager shall not have the authority to determine that the use of any building, structure, location, premise or land as a Marijuana Dispensary may be permitted in any zone, or to grant any variance authorizing any Marijuana Dispensary. Both primary and accessory Marijuana Dispensary uses are included in this prohibition.

B. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana or products containing Marijuana in any form, for medical or non-medical purposes except as provided in this Code and state law. The prohibition includes renting, leasing, or otherwise permitting a Marijuana business to occupy or use a location, vehicle, or other mode of transportation.

C. It is unlawful for any person knowingly to make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided to the City under this chapter or any applicable section of the Vallejo Municipal Code. A violation of this subsection may be prosecuted as a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

7.100.040 No Vested or Nonconforming Rights.

Neither this chapter, nor any other provision of the Vallejo Municipal Code, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit or land use entitlement running with the land regarding any Marijuana Dispensary.

7.100.050 Permit to Operate Medical Marijuana Dispensary, Recreational Marijuana Dispensary.

Notwithstanding the activities prohibited by this chapter, and notwithstanding that Marijuana Dispensary is not a land use allowed pursuant to the zoning ordinance, and in light of the

enactment of MAUCRSA in June 2017, any person who has received a limited immunity authorization letter from the City of Vallejo on or before August 22, 2017, shall receive a permit to operate (P-MMD) for their Medical Marijuana Dispensary, and for Distribution until the earliest of December 31, 2018, or issuance of a permit for Distribution pursuant to Title 16. An extension shall be granted through June 30, 2019, with submission of a completed project application for Title 16 and Chapter 7.200 permits by December 20, 2018. Any person who has received a limited immunity authorization letter from the City of Vallejo on or before August 22, 2017, shall receive a permit to operate (P-RMD) for their Recreational Marijuana Dispensary, and for Distribution, until the earliest of adoption of a new development code or December 31, 2019. Permits shall be subject to revocation pursuant to subsection 7.100.085. Permits are valid for one year from the date of issuance and must be renewed annually on or by June 30 for the next fiscal year. The requirements of Chapter 7.200.100 apply to renewal of permit for Marijuana Dispensary.

Within 90 calendar days of issuance of the permit to operate, the Marijuana Dispensary must comply with the following:

- A. Display a sign in the Marijuana Dispensary prohibiting use or consumption of Marijuana on or near the premises.
- B. Contain outdoor waste and recycle bins within a locked structure to prevent unauthorized entry.
- C. Comply with outdoor signage restrictions of Chapter 16.64.
- D. Install exterior perimeter lighting system. Exterior lighting should be high pressure sodium, or equivalent type, and shall have an illumination intensity of between one and four foot candles. Lights shall be directed and shielded so as not to illuminate into adjoining properties. Lights shall have a housing to protect against breakage. Broken or burnt out lights shall be replaced within five calendar days.

7.100.055 Delivery

- A. Each Vallejo permittee for Medical Marijuana Dispensary or Recreational Marijuana Dispensary is authorized to deliver.
- B. Deliveries originating outside of Vallejo shall comply with all local and state law requirements, including obtaining a business license and paying business license tax. Deliveries into the City of Vallejo are permitted only from dispensaries with storefronts from the cities that do not restrict delivery into their jurisdictions from cities outside their boundaries.
- C. Every person making a delivery in Vallejo shall carry a copy of the local and state license authorizing delivery.

7.100.060 Location.

- A. A Marijuana Dispensary shall not be located within a six hundred (600) foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Marijuana Dispensary is to be located without regard to intervening structures.
- B. Any Marijuana Dispensary that is otherwise compliant with the provisions of this chapter, but does not comply with subsection A and California Health & Safety Code Section 26054(b),

but is in possession of a P-MMD as of October 1, 2017, or P-RMD by April 1, 2018, will not be required to relocate.

C. Any person who has received a permit for a Medical Marijuana Dispensary and a permit for a Recreational Marijuana Dispensary must conduct all operations at one site.

7.100.070 Prohibited Marijuana Dispensary Activity.

A. No person shall cause or permit the sale, cultivation, manufacture, distribution or exchange of Marijuana except that any Marijuana Dispensary with a local permit is authorized to sell and deliver Marijuana.

B. All Marijuana Dispensaries must comply at all times with requirements of MAUCRSA including implementing regulations, which statutes and regulations may be amended from time to time.

C. No Marijuana Dispensary shall be open to anyone between the hours of eight o'clock (8:00) p.m. and nine o'clock (9:00) a.m.

D. No person under age 18 shall be allowed on the property unless he or she is accompanied by his or her licensed attending physician, parent(s) or documented legal guardian, or is an emancipated minor as demonstrated by documentation.

E. No Marijuana Dispensary, Manager or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages, or any controlled substance, on the property or in the parking area of the Property.

F. No transactions outside, or partially outside of an enclosed building are permitted except delivery as authorized in Section 7.100.055. No transactions which are performed through walk-up or drive-through service are allowed.

G. No Marijuana Dispensary, Manager or member shall cause or permit the use, inhalation, smoking, eating, ingestion, or otherwise consumption of marijuana on the Property, including the parking areas of the property.

7.100.080 Requirements and Proof of Compliance.

No Marijuana Dispensary, Manager or person shall carry on, maintain or conduct any Marijuana Dispensary related operations, including retail or wholesale sales of Marijuana or preparing, giving away or distributing edible Marijuana products unless all requirements in sections 7.100.60-7.100.110 are met. The City Manager is authorized to determine that a requirement is met when a Marijuana Dispensary demonstrates circumstances beyond its control.

A. Any Medical Marijuana Dispensary seeking to pay marijuana business tax and receive limited immunity from prosecution shall submit to the City Manager or designee the following on or before September 20, 2015.

1. A tax certificate issued by the City to the dispensary before April 23, 2013.
2. Evidence that the Medical Marijuana Dispensary operated prior to April 23, 2013.

3. Evidence demonstrating the Medical Marijuana Dispensary paid quarterly taxes from the date of opening until the City ceased accepting tax in February 2015.

4. The address of the property where the Medical Marijuana Dispensary is operating.

5. Evidence that the site of the Medical Marijuana Dispensary complies with the location requirement of section 7.100.060.

6. The name, address, telephone number, title and function(s) of each Manager. For each Manager, a fully legible copy of one (1) valid government-issued form of photo identification, such as a driver's license.

7. No person who is currently charged with or has been convicted within the previous ten (10) years of a crime of moral turpitude (such as theft, fraud, or assault), or who is currently on parole or probation for crimes involving the sale or distribution of any controlled substance, shall be engaged directly or indirectly in the management of the Medical Marijuana Dispensary nor, further, shall manage or handle the receipts and expenses of the collective. For each Manager, submit a summary criminal history ("LiveScan") prepared not more than two (2) weeks prior to the date of submission and demonstrating that there are no pending charges or convictions for any crime (including, without limitation, theft, fraud, or assault) within the previous 10 years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

8. Either (a) if the Medical Marijuana Dispensary is incorporated, a certified copy of Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Medical Marijuana Dispensary's bylaws demonstrating that the Medical Marijuana Dispensary is organized as a non-profit entity; or (b) if the Medical Marijuana Dispensary is unincorporated, a copy of the Medical Marijuana's notarized creating document demonstrating that the Medical Marijuana Dispensary is organized as a non-profit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the Medical Marijuana Dispensary will operate.

9. A seller's permit from the California Board of Equalization.

10. The name and address of the applicant's current agent for service of process.

11. A copy of the Medical Marijuana Dispensary's operating conditions, containing a statement dated and signed by each Manager, under penalty of perjury, he or she has read, understands and shall ensure compliance with all operating conditions.

12. A copy of the prohibited activity checklist, available from the City containing a statement dated and signed by each Manager, under penalty of perjury, that he or she has read, understands and shall ensure that neither the Medical Marijuana Dispensary nor its members and Managers shall engage in the prohibited activity.

13. A statement of whether edible medical marijuana is prepared at the Property and, if so, evidence of approval from Solano County Department of Resource Management.

14. No Medical Marijuana Dispensary owner shall own and operate more than one Medical Marijuana Dispensary in Vallejo.

B. Annually with the application to renew the tax certificate and permit the Marijuana Dispensary shall submit any updates to or revisions to the information in subsection A.

7.100.085 Revocation of Permit

A. The city manager may revoke a permit if any of the following conditions apply:

1. Failure or inability to comply with the provisions of Chapter 7.100.

2. Failure to provide information required by city.

3. Any owner or manager of Marijuana Dispensary has been convicted of an offense listed in subsection 7.100.080(A)(7).
4. Marijuana Dispensary has had state license pursuant to MAUCRSA suspended or revoked.
5. Failure to pay city marijuana tax.
6. Failure to maintain valid state seller's permit.

B. No revocation shall occur unless the city manager has issued a written warning sent by U.S. mail to the Marijuana Dispensary and the Marijuana Dispensary has failed to comply within 30 calendar days of mailing.

7.100.088 Appeal

A. Any person aggrieved by the decision of the city manager to revoke the permit may appeal the city manager's written decision to a hearing officer selected by the city. The hearing officer shall render a decision affirming or reversing the decision of the city manager. The hearing officer may direct the reconsideration of the matter in the light of his or her decision but the decision shall not limit or control in any way the discretion vested by law in the city.

B. Any person aggrieved by the decision of the hearing officer may seek judicial review of the decision by filing a petition with a court of competent jurisdiction pursuant to Code of Civil Procedure Section 1094.5 and 1094.6.

7.100.090 Operating Conditions.

A Marijuana Dispensary must have a prohibited activity checklist acknowledging each prohibited activity set forth in section 7.100.070, to be signed by each Manager, with an obligation to refrain from such activity. In addition, each Marijuana Dispensary shall continually operate in accordance with all of the following conditions of operation, provided that additional conditions may be imposed by the City as necessary to preserve the public health, safety, and welfare:

A. The Property satisfies all location requirements as set forth in this chapter.

B. All taxes and fees paid to the City are current.

C. The Property complies with all applicable Building and Fire Code provisions, the Property Maintenance Ordinance, and the Property is maintained free of debris, litter and trash.

D. The Property provides a sufficient odor-absorbing ventilation and exhaust system so that odor generated inside the Property is not detected outside the Property, anywhere on adjacent Property or public rights-of-way, or within any other unit located within the same building as the Marijuana Dispensary.

E. All transactions, including but not limited to cash or in-kind contributions, reimbursement or compensation, shall be fully documented.

F. Each Marijuana Dispensary must have a security plan including procedures for verifying identification of Qualified Patients and Primary Caregivers both before entering the dispensary and again before receiving medical marijuana. Each Marijuana Dispensary must have a description of the physical presence of licensed and uniformed security guards required to be present including their number, location and specific hours on site; and a theft prevention plan.

which includes locked exterior doors and windows during the times the business is closed. Each Marijuana Dispensary must have a procedure for ensuring compliance with the customer age requirements of MAUCRSA.

G. The Marijuana Dispensary must use point of sale software acceptable to the finance director.

H. A Marijuana Dispensary may only do business, apply for local and state licenses, advertise and dispense under one name, which must be the name on the local permit and on the state license.

I. A Marijuana Dispensary shall file with the City Manager a copy of any state application for new or renewed marijuana licenses within seven calendar days of the application.

7.100.100 Prohibition Against Transfer or Relocation.

A. No Marijuana Dispensary that is sold or transferred will receive limited immunity. Transfer is a change in principals, assignment of lease or sale of business asset other than a Marijuana product.

B. Except for a relocation allowed under section 7.100.060, no Marijuana Dispensary shall relocate. The following shall be deemed an unauthorized change in location:

1. Any relocation or expansion that includes a separate piece of property or parcel of land.

2. Any expansion of the property which represents a greater than fifty (50) percent increase in the square footage of occupancy or in the square footage that is open to the public.

7.100.110 Maintenance of Records.

A. A Marijuana Dispensary shall maintain the following accurate and truthful records on the Property:

1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.

2. The full name, address, and telephone number(s) of each Manager and the exact nature of the participation in the management of the Marijuana Dispensary.

3. The full name, address, and telephone number(s) of each Marijuana Dispensary Manager.

4. The current address of all sites at which Marijuana is cultivated on behalf of the Marijuana Dispensary.

5. The full name, date of birth, residential address, and telephone number(s) of each Marijuana Dispensary member and Manager; the date each joined; the exact nature of each member's and Manager's participation in the Marijuana Dispensary;

6. A written accounting of all cash and in-kind contributions, reimbursements, and compensation provided by or to the Managers and members to or from the Marijuana Dispensary, and all expenditures and costs incurred by the Marijuana Dispensary.

7. An inventory record documenting the dates and amounts of Marijuana stored on the property.

8. Copies of the prohibited activity checklist containing a statement dated and signed by each Marijuana Dispensary member and Manager, under penalty of perjury, that he or she has read, understands and shall not engage in the prohibited activity.

B. These records shall be maintained by the Marijuana Dispensary for a period of five (5) years and shall be made available by the Manager to the City upon request, subject to the authority set forth in section 7.100.120.

7.100.120 Inspection Authority.

City representatives may enter and inspect the property of every Marijuana Dispensary between the hours of nine o'clock (9:00) a.m. and seven o'clock (7:00) p.m., or at any reasonable time to ensure compliance and enforcement of the provisions of this chapter. It is unlawful for any Property owner, landlord, lessee, Marijuana Dispensary member or Manager or any other person having any responsibility over the operation of the Marijuana Dispensary to refuse to allow, impede, obstruct or interfere with an inspection.

7.100.130 Public Nuisance

Any Marijuana Dispensary that is not in compliance with sections 7.100.060-080 and 7.100.080.110 is an illegal public nuisance.

7.100.140 Enforcement.

A. Any person violating any provision of this chapter or misrepresenting any material fact in demonstrating compliance with requirements for limited immunity shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than twelve (12) months, or by both such fine and imprisonment.

B. As a nuisance per se, any violation of this chapter shall be subject to injunctive relief, revocation of the certificate of occupancy for the property, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state law for any violation committed by the Marijuana Dispensary, its Managers, members or any person related or associated with the Marijuana Dispensary.

SECTION 2. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed and adopted this ordinance, and each and all provisions hereof, irrespective of the fact one or more provisions may be declared invalid.

SECTION 3. Effective Date.

This Emergency Ordinance shall take effect and be in full force and effect on February 28, 2018.

Adopted by the City Council of the City of Vallejo as an emergency ordinance at a regular meeting held on February 27, 2018 by the following vote:

AYES: Mayor Sampayan, Vice Mayor Miessner, Councilmembers Dew-Costa,
Malgapo, McConnell, Sunga, and Verder-Aliga
NOES: None
ABSENT: None
ABSTAIN: None


BOB SAMPAYAN, MAYOR

ATTEST:


DAWN G. ABRAHAMSON, CITY CLERK