



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 1055

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING CHAPTER 5.60, CANNABIS BUSINESS PILOT PROGRAM, OF TITLE 5, BUSINESS TAXES, LICENSES AND REGULATION OF THE ATWATER MUNICIPAL CODE AND ADDING CHAPTER 5.70, CANNABIS REGULATORY PROGRAM, TO TITLE 5, BUSINESS TAXES, LICENSES AND REGULATION OF THE ATWATER MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 et seq.) to enable certain Californians to legally possess, use, and cultivate marijuana for personal medical use free from prosecution under enumerated provisions of state law; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMP”) (codified as Health and Safety Code, § 11362.7 et seq.), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under state law; and

WHEREAS, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMP preempted cities’ authority to regulate medical marijuana land uses; and

WHEREAS, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the State’s history adopted comprehensive regulations and licensing for medical marijuana businesses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

WHEREAS, Senate Bill 94 (“SB 94”), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

WHEREAS, AUMA, as amended by MAUCRSA, recognizes, preserves, and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

WHEREAS, the City desires to move away from its current framework of regulating cannabis businesses through Development Agreements, and instead establish a comprehensive set of regulations clarifying objective standards applicable to all cannabis businesses and applicants; and

WHEREAS, this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines, Section 15061(b)(3), because it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would require a regulatory permit and impose operating criteria on cannabis retailers. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes separately applicable environmental review; and

WHEREAS, the City Council finds that approval of this Ordinance would accomplish the following:

1. Update the City’s cannabis permitting and regulatory provisions to terminate the current Development Agreement framework, comply with state and federal law, require community benefits as consideration for engaging in cannabis businesses, establish due process rights for permit applicants, and clarify operating requirements for permitted cannabis businesses.
2. Ensure City residents’ health, peace, and safety by clarifying the procedures for the enforcement of cannabis regulations.

NOW, THEREFORE, be it ordained by the City Council of the City of Atwater as follows:

SECTION 1. A new section 5.60.140 is added to Atwater Municipal Code Chapter 5.60, of Title 5 of the Atwater Municipal Code, to read as follows:

“5.60.140**Termination of Pilot Program**

As of the effective date of the Ordinance adding Chapter 5.70 to this Title 5 of the Atwater Municipal Code, this Chapter 5.60 shall only be in effect as to cannabis businesses which hold current, non-expired entitlements obtained in accordance with this Chapter 5.60. To the extent there are any conflicts between this Chapter 5.60 and Chapter 5.70, Chapter 5.70 shall govern except as to persons with current, non-expired entitlements under Chapter 5.60. Existing cannabis businesses operating pursuant to a valid Development Agreement and Conditional Use Permit under this Chapter, and in good standing with the City as of the effective date of this Chapter, may continue to operate on the same terms provided by said Development Agreement and Conditional Use Permit during the effective term of the Development Agreement executed with the City, unless terminated or extended earlier, as set forth in the Development Agreement. Prior to expiration of the Development Agreement, Existing Cannabis Developers who wish to continue cannabis business activities must submit a Cannabis Regulatory Permit renewal application under the procedures of Section 5.70.150 in order to transition to a Cannabis Regulatory Permit under this Chapter. Failure to timely submit the Cannabis Regulatory Permit renewal application will result in expiration of all rights associated with the Development Agreement at the conclusion of the Development Agreement term. Once an applicant has applied for and been granted a Cannabis Regulatory Permit as required by Chapter 5.70, any entitlements previously held pursuant to a Development Agreement under this Chapter 5.60 shall be deemed terminated, of no further force or effect, and superseded by the provisions of Chapter 5.70.”

SECTION 2. Atwater Municipal Code Chapter 5.70 is hereby added to Title 5 of the Atwater Municipal Code, to read in its entirety as follows:

CHAPTER 5.70**CANNABIS BUSINESS PROGRAM**

5.70.010	Title
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5.70.030	Legal Authority
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5.70.380	Additional Operating Requirements for Distributors
5.70.390	Additional Operating Requirements for Testing Labs
5.70.400	Additional Operating Requirements for Cannabis Manufacturing: Edibles and Other Cannabis Products; Sale of Edible and Other Cannabis Products
5.70.410	Additional Operating Requirements for Cultivators
5.70.420	Delivery Requirements for Store Front Retail, Non-Store Front Retail, and Microbusinesses
5.70.430	Operating Requirements for Out-of-City Delivery Services
5.70.440	Permissible Delivery Locations and Customers
5.70.450	Promulgation of Regulations, Standards, and Other Legal

	Duties
5.70.460	Community Relations Contact Person
5.70.470	On-Site Consumption and Temporary Cannabis Event Permits
5.70.480	Fees Deemed Debt to the City
5.70.490	Permit Holder Responsible for Violations
5.70.500	Inspection and Enforcement
5.70.510	Violations

5.70.010 Title.

This Chapter shall be known as the Cannabis Business Program Ordinance of the City of Atwater.

5.70.020 Purpose and Intent.

It is the purpose and intent of this Chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") to accommodate the needs of medically ill persons in need of cannabis for medicinal purposes as recommended by their health care provider(s), and to provide access to same. It is also the purpose and intent of this Chapter to provide access to adult-use cannabis for persons aged 21 and over as authorized by the MAUCRSA, while imposing sensible regulations on the use of land to protect the City's residents, neighborhoods, and businesses from disproportionately negative impacts. It is the purpose and intent of this Chapter to regulate the commercial cultivation, processing, manufacturing, testing, sale, delivery, and distribution of cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of the City and to enforce rules and regulations consistent with state law.

5.70.030 Legal Authority.

This Chapter is adopted pursuant to the authority granted to the City by Section 7 of Article XI of the California Constitution, Sections 50022.1-50022.8 and 50022.10 of the California Government Code, and the provisions of the MAUCRSA.

5.70.040 Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized by this Chapter, commercial cannabis activity, as that term is defined in section 5.70.060 herein, is expressly prohibited in the City.

5.70.050 Compliance with State and Local Laws and Regulations.

It is the responsibility of the owners and/or operators of any commercial cannabis business within the City limits to ensure that they operate 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.

5.70.060 Definitions.

- (A) "Applicant" means a person or entity that submits an application for a Cannabis Regulatory Permit under this Chapter.
- (B) "Cannabis" shall have the same meaning as that appearing in Business and Professions Code Section 26001(e), as may be amended, or renumbered from time to time.
- (C) "Canopy" shall have the same meaning as that appearing in Title 4, Section 15000 of the California Code of Regulations, as may be amended or renumbered from time to time.
- (D) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Health and Safety Code Section 11362.7, as may be amended, or renumbered from time to time.
- (E) "City" shall mean the City of Atwater, California.
- (F) "City Manager" shall mean the City of Atwater City Manager or his or her designee.
- (G) "Commercial cannabis activity" shall have the same meaning as that appearing in Business and Professions Code Section 26001(j), as may be amended, or renumbered from time to time.
- (H) "Commercial cannabis business" means any business or operation which engages in medicinal or adult-use commercial cannabis activity.
- (I) "Cannabis Regulatory Permit" means a regulatory permit issued by the City pursuant to this Chapter, to a commercial cannabis business, and is required before any commercial cannabis activity may be conducted in the City. The initial permit and annual renewal of a commercial cannabis business is made expressly contingent upon the business's ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the commercial cannabis activity at issue.
- (J) "Cannabis Business Permittee" or "Permittee" means a person or entity that has received a Cannabis Regulatory Permit from the City as authorized under this Chapter.
- (K) "Dispensing" means any activity involving the retail sale of cannabis or cannabis products from a retailer.

- (L) “Distributor” shall have the same meaning as that appearing in Business and Professions Code Section 26001(s), as may be amended, or renumbered from time to time.
- (M) “Existing Cannabis Developer” means the holder of a Development Agreement with the City of Atwater for cannabis operations issued prior to the effective date of this Chapter, subject to the terms of said Development Agreement and the Cannabis Business Pilot Program.
- (N) “Limited-access area” means an area in which cannabis is stored or held and is only accessible to a permittee and authorized personnel.
- (O) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.
- (P) “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid Cannabis Regulatory Permit for manufacturing from the City of Atwater and, a valid state license as required for manufacturing of cannabis products.
- (Q) “MAUCRSA” means the Medicinal and Adult Use Cannabis Regulation and Safety Act, as codified within the California Business and Professions Code, and as may be amended from time to time.
- (R) “Microbusiness” shall have the same meaning as that contained in Business and Professions Code Section 26001(a), as may be amended, or renumbered from time to time.
- (S) “Non-retailer business” means a wholesale business which does not include a retail component, including but not limited to cultivation, manufacturing, distribution, and testing lab businesses.
- (T) “Non-storefront retailer” is a subset of “Retailer” and is a licensed and permitted retail business that is closed to the public and provides product to customers solely by means of a delivery service which the retailer owns and controls.
- (U) “Non-volatile solvent” means any solvent used in the extraction process that is not a volatile solvent as defined by state law. For purposes of this Chapter, a non-volatile solvent includes carbon dioxide (CO₂) used for extraction and ethanol used for extraction or post-extraction processing.

(V) "Owner" means any of the following:

- (1) A person with an aggregate ownership interest of 10 percent or more in the commercial cannabis business, unless the interest is solely a security, lien or encumbrance.
- (2) An individual who manages, directs, or controls the operations of the commercial cannabis business, including but not limited to:
 - (a) A member of the board of directors of a nonprofit.
 - (b) A general partner of a commercial cannabis business that is organized as a partnership.
 - (c) A non-member manager or manager of a commercial cannabis business that is organized as a limited liability company.
 - (d) The trustee(s) and all persons who have control of the trust and/or the commercial cannabis business that is held in trust.
 - (e) An individual with the authority to provide strategic direction and oversight for the overall operations of the commercial cannabis business, such as the chief executive officer, president or their equivalent, or an officer, director, vice president, general manager, or their equivalent.
 - (f) An individual with the authority to execute contracts on behalf of the commercial cannabis business.
 - (g) When an entity is an owner in a commercial cannabis business, all entities, and individuals with a financial interest in the entity shall be disclosed to the City and may be considered owners of the commercial cannabis business. For example, this includes all entities in a multi-layer business structure, as well as the chief executive officer, members of the board of directors, partners, trustees, and all persons who have control of a trust and managing members or non-member managers of the entity. Each entity disclosed as having a financial interest must disclose the identities of persons holding financial interests until only individuals remain.

(W) "Package" means any container or receptacle used for holding cannabis or cannabis products.

(X) "Patient" or "qualified patient" shall have the same meaning as that contained in California Health and Safety Code Section 11362.7 et seq., as may be amended, or renumbered from time to time, and which includes within its definition a person who is entitled to the protections of California Health & Safety Code Section 11362.22, as may be amended, or renumbered from time to time.

(Y) "Person" shall mean 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.

- (Z) "Person with an identification card" shall have the same meaning as that contained in California Health and Safety Code Section 11362.7, as may be amended, or renumbered from time to time.
- (AA) "Processing" means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis and nonmanufactured cannabis products.
- (BB) "Retailer" or "Storefront Retailer" shall have the same meaning as that contained in Section 26070(a)(1) of the California Business and Professions Code, as may be amended, or renumbered from time to time.
- (CC) Sensitive use is defined as:
 - (1) A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).
 - (2) A commercial daycare center licensed by the State, County or City.
 - (3) A church or other place of worship.
 - (4) A Youth Center, as that term is defined herein.
- (DD) "State license" means a permit or license issued by the State of California, or one of its departments or divisions, under the MAUCRSA and any subsequent related State of California legislation, to engage in cannabis activity. A state license alone will not authorize the holder to operate a commercial cannabis business, as state law also requires a license or other authorization issued by a local jurisdiction.
- (EE) "Topical cannabis" means a product intended for external application and/or absorption through the skin. A topical cannabis product is not considered a drug as defined by California Health and Safety Code Section 109925, as may be amended, or renumbered from time to time.
- (FF) "Transport" means the transfer of cannabis products from the licensed business location of one state licensee to the licensed business location of another state licensee, for the purposes of conducting cannabis activity authorized by the MAUCRSA which may be amended or repealed by any subsequent related State of California legislation. Transport can only be performed by state licensed distributors and does not include deliveries of cannabis or cannabis products.
- (GG) "Volatile solvent" means a solvent as defined by Health and Safety Code Section 11362.3(b)(3), as may be amended, or renumbered from time to time.
- (HH) "Youth center" means any:

- (1) Public or private facility that is primarily and predominantly 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.
- (2) It shall also include a park, 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.
- (3) This definition 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.

5.70.070 Licenses and Permits Required.

- (A) No person may engage in any commercial cannabis activity within the City unless the person meets all of the following requirements:
 - (1) Possess a valid State of California Seller's Permit;
 - (2) Possess a valid Cannabis Regulatory Permit issued by the City;
 - (3) Possess a valid Conditional Use Permit issued by the City;
 - (4) Possess a valid Business License issued by the City; and
 - (5) Is currently in compliance with all applicable state and local permits, laws, and regulations pertaining to the commercial cannabis business and the cannabis activities, including the duty to obtain any other required state or local licenses.

5.70.080 Maximum Number of Authorized Commercial Cannabis Businesses and Permit Types.

This section is intended to set a maximum number of commercial cannabis businesses that may operate within the City and identify the number of authorized permit types that may be issued in order for commercial cannabis businesses to operate in the City.

- (A) The number of each type of commercial cannabis business that shall be permitted to operate in the City may be established by resolution by the City Council.

- (B) Each year following the City Council's initial award of permits, if any, or at any time in the City Council's discretion, the City Council may reassess the number of Cannabis Regulatory Permits which are authorized for issuance and make any changes by resolution.
- (C) The City Council at its sole discretion may determine that the number and/or types of Cannabis Regulatory Permits should remain the same or be modified.
- (D) Nothing in this section shall be interpreted as limiting the City's authority to impose moratoria or certain operational limitations on any businesses in the City, as otherwise authorized by the Government Code or the City's police powers.

5.70.090 Community Benefits.

- (A) The application procedure process may, at the discretion of the City Manager or his or her designee, include a component on community benefits.
- (B) Any community benefits that a commercial cannabis business agrees to provide shall be incorporated into the terms and conditions under which the commercial cannabis business will operate with the City's approval, if and when a Cannabis Regulatory Permit is issued. Such terms and conditions shall be in addition to the requirements of this Chapter.
- (C) Community benefits may include but will not be limited to: in-kind donations, sponsorships, and/or financial support for community events such as fairs, afterschool programs, youth centers, Boys and Girls Clubs, school athletic programs, school clubs, community centers, homeless shelters, senior centers, senior living facilities, parks, and recreation programs.

5.70.100 Evidence of Cannabis Owners and/or Employees; Background Check Required.

- (A) Any person who is an owner, employee or who otherwise works within a commercial cannabis business must be legally authorized to do so under applicable state law.
- (B) Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), as may be amended or renumbered from time to time and which authorize city authorities to access state and local criminal history information for employment, licensing, or certification purposes, and authorize access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every applicant for entitlements under this Chapter must submit fingerprints and other information deemed necessary by the city manager or their

designee for a background check by the Atwater police department or a third party. A fee for the cost of the background investigation, which shall be the actual cost to the city of Atwater to conduct the background investigation as it deems necessary and appropriate, including city staff time and costs, shall be paid at the time the person submits for the background check. The persons subject to such background check are all owners, managers, supervisors, and any individual who will be participating in the direction, control, or management of the commercial cannabis business licensed in Atwater.

- (C) The City or its third-party contractor shall conduct said criminal background checks, which must at a minimum identify the following:
 - (1) Whether the owner or employee 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 or employee 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 or employee 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, as may be amended or renumbered from time to time.
- (D) Evidence of a conviction of any the offenses enumerated in Section 5.70.100(C) of this Chapter, or any other crime involving moral turpitude, may result in denial of an outstanding application for a cannabis regulatory permit or associated conditional use permit or business license, and/or suspension of a cannabis regulatory permit, conditional use permit, or business license then in effect.

5.70.110 Application for Cannabis Regulatory Permit.

All persons seeking a Cannabis Regulatory Permit must make a written application to that effect upon a form to be provided by the City, which form may require the applicant to set forth certain information about the commercial cannabis business that is the subject of the application, including but not limited to operating hours, site plan, security plan, and employee information. 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.

5.70.120 Procedure Guidelines and Review Criteria to Evaluate Cannabis Regulatory Permit Applications.

- (A) By resolution, the City Council shall adopt Procedure Guidelines and Review Criteria for the City's evaluation of cannabis regulatory permit applications.
- (B) The Procedure Guidelines shall provide the process for soliciting applications, including time frames, limitations, requirements, forms, and rules for completing applications.
- (C) The scoring metrics determined by the adopted Review Criteria shall be used to determine which candidates will be eligible to proceed to the final selection process.
- (D) The City Manager or their delegate shall be authorized to prepare any necessary forms and adopt any necessary rules to implement the Procedure Guidelines and Review Criteria, and to apply the Procedure Guidelines and Review Criteria to approve or disapprove an application for a Cannabis Regulatory Permit.

5.70.130 City's Reservation of Rights.

The City reserves the right to reject any or all applications for a Cannabis Regulatory Permit. Prior to such 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 program, or any particular category of 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 candidate submitting an application. In addition to a failure to comply with other requirements in this Chapter, 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 was considered not fully responsive to the request for a permit application, i.e., was incomplete.

5.70.140 Term of a Cannabis Regulatory Permit.

Each Cannabis Regulatory Permit issued pursuant to this Chapter shall expire when the commercial cannabis business for which the license is issued ceases operations authorized thereby. The term of a Cannabis Regulatory Permit shall otherwise be from the date of issuance to the end of the then-current fiscal year, at which point renewal will be required for the Cannabis Regulatory Permit not to lapse. Cannabis Regulatory

Permits may be renewed as provided in Section 5.70.150.

5.70.150 Renewal of Cannabis Regulatory Permits.

- (A) An application for renewal of a Cannabis Regulatory 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 of the information required for new applications.
- (C) The applicant shall pay a fee in an amount to be set by City Council resolution 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 Cannabis Regulatory Permit may, in the City Manager or his/her designee's discretion, be rejected if any of the following occurs:
 - (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 or his/her designee.
 - (2) The Cannabis Regulatory Permit is suspended or revoked at the time of the application for renewal.
 - (3) The commercial cannabis business has not exercised its Cannabis Regulatory Permit prior to the renewal application or the approved extension of the deadline from the City Manager or his/her designee. "Exercised" shall be defined as the earliest of when any of the following occur:
 - a. A Certificate of Occupancy has been issued,
 - b. The permitted use(s) has commenced on the site, and
 - c. A City Building Permit or Grading Permit is secured, and construction lawfully commenced.
 - (4) The commercial cannabis business has failed to conform to the requirements of the Cannabis Regulatory Permit or this Chapter or any regulations adopted pursuant to this Chapter.
 - (5) The commercial cannabis business has failed to submit sufficient documentation responsive to the City Council's adopted Procedure Guidelines and Review Criteria, such that the City cannot make an informed decision regarding the application for renewal.

- (6) The permit holder fails or is unable to renew its state license.
- (7) 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.
- (E) The City Manager or his/her designee is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the City Manager or his/her designee is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety, or welfare.

5.70.160 Existing Cannabis Developers.

As of the effective date of the Ordinance adding this Chapter 5.70 to this Title 5 of the Atwater Municipal Code, Chapter 5.60 shall only continue in effect as to cannabis businesses which hold current, non-expired entitlements obtained in accordance with Chapter 5.60. To the extent there are any conflicts between Chapter 5.60 and this Chapter 5.70, Chapter 5.70 shall govern except as to persons with current, non-expired entitlements under Chapter 5.60. Notwithstanding Section 5.70.110 of this Code, Existing Cannabis Developers operating pursuant to a valid Development Agreement and Conditional Use Permit and in good standing with the City, as of the effective date of this Chapter, may continue to operate on the same terms provided by said Development Agreement and Conditional Use Permit during the effective term of the Development Agreement executed with the City, unless terminated or extended earlier, as set forth in the Development Agreement. Prior to expiration of the Development Agreement, Existing Cannabis Developers who wish to continue cannabis business activities must submit a Cannabis Regulatory Permit renewal application under the procedures of Section 5.70.150 in order to transition to a Cannabis Regulatory Permit under this Chapter. Failure to timely submit the Cannabis Regulatory Permit renewal application will result in expiration of all rights associated with the Development Agreement at the conclusion of the Development Agreement term. Once an applicant has applied for and been granted a Cannabis Regulatory Permit as required by this part, any entitlements previously held pursuant to a Development Agreement under Chapter 5.60 shall be deemed terminated, of no further force or effect, and superseded by the provisions of this Chapter 5.70.

5.70.170 Revocation of Permits.

Cannabis Regulatory Permits may be revoked for any violation of any state or local laws, and/or rules, and/or standards, policies, procedures, or regulations in this Chapter relating to cannabis.

5.70.180 Effect of State License Suspension or Revocation.

Suspension or revocation of a state license, or by any of its departments or divisions,

shall immediately suspend the ability of a commercial cannabis business to operate within the City until the State of California or its respective department or division reinstates or reissues the state license, or otherwise takes appropriate action.

5.70.190 Grounds for Appeal.

Appeals relating to additional or changed terms imposed by the City upon an existing Cannabis Regulatory Permit or Conditional Use Permit, to revoke or suspend a Cannabis Regulatory Permit, or to deny renewal of an application for a permit or application to amend the terms of a permit, shall be conducted as prescribed in this Chapter. An applicant that is eligible to participate in the interview or other final decision process but is not selected during the interview or other final decision process shall not be eligible to appeal the outcome of the process.

5.70.200 Written Request for Appeal.

- (A) Within ten (10) calendar days after the date of a decision to revoke or suspend a Cannabis Regulatory Permit or deny an application to renew a Cannabis Regulatory Permit, or to add or change conditions to a permit, an Applicant or Permittee may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.
- (B) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

5.70.210 Notice of Appeal Process.

- (A) Within ten (10) calendar days after service of the notice of the decision to revoke or suspend a permit, to deny a renewed application for a permit, or to add or change conditions to a permit, the applicant or permittee may appeal such action by filing a written Notice of Appeal with the City Clerk setting forth the reason why the decision was not proper. For an initial permit application appeal, the reason for appeal must be stated with specificity. Date of service shall mean the date when a notice or written decision was caused to be delivered by certified, first-class mail. Lack of receipt of the notice by the Applicant or Permittee cannot form the basis for an appeal.
- (B) 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) Specify decisions, actions, or a particular part thereof, that are the subject of the appeal.
 - (3) Include a true and correct copy of the notice issued by the City which the

appellant is appealing.

- (4) 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 hearing officer to understand the nature of the controversy, the basis of the appeal, and the relief requested.
 - (5) All documents or other evidence pertinent to the appeal that the appellant requests the hearing officer or body to consider at the hearing.
 - (6) An appeal fee as established by Resolution of the City Council.
- (C) Failure of the City Clerk to receive a timely appeal constitutes a waiver of the right to appeal the notice issued by the City. In this event, the City's notice of revocation, nonrenewal, change or addition of permit terms, or suspension shall be final.
- (D) 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 hearing officer. Notices of Appeal not served in a timely manner or otherwise not in accordance with the provisions of this Chapter shall not be construed as allowing such business to operate pending appeal.
- (E) If no appeal is timely filed in the event of a decision of nonrenewal, the Cannabis Regulatory 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.
- (F) A hearing officer, as appointed by the City Manager or his/her designee, shall hear appeals under this Chapter.

5.70.220 Appeal Hearing Process.

- (A) Appellants who file a timely written Notice of Appeal will be entitled to an administrative hearing before the hearing officer.
- (B) Upon receipt by the City Clerk of a timely-filed Notice of Appeal pertaining to suspensions, revocations, change or addition of permit terms, or non-renewals, the City Clerk shall schedule a hearing within forty-five days (45) days or as soon as reasonably possible thereafter, or upon any other date that the City and appellant shall mutually agree upon.
- (C) The appellant(s) 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 ("Notice of Hearing").
- (D) A request by an appellant 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 City 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.

- (E) At the date, time, and location set forth in the Notice of Hearing, the hearing officer shall hear and consider the testimony of the appellant(s), City staff, and/or their witnesses, as well as any documentary evidence properly submitted for consideration.
- (F) 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 Appellant shall bear the burden of proof by a preponderance of the evidence.
 - (3) The hearing officer may not accept and consider late evidence not submitted initially with the Notice of Appeal unless the appellant demonstrates the lateness was due to his or her mistake, inadvertence, surprise, or excusable neglect. The hearing officer shall make such determinations on a case-by-case basis.
 - (4) The appellant may bring a language interpreter to the hearing at their sole expense.
 - (5) 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.
- (G) If the appellant, or their legal representative, fails to appear at the appeal hearing, the hearing officer may open the appeal hearing, allow the City to present its prima facie evidence in support of the challenged decision, and ask the hearing officer to make a determination as to the appeal on the record. The hearing officer shall then send a notice of its determination 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 hearing officer's notice of decision is final and binding.
- (H) Final Decision. Following the conclusion of the administrative hearing, the hearing

officer shall issue a written decision within a reasonable time which (i) determines if the action appealed from is affirmed or overturned and (ii) specifies the reasons for the decision.

- (l) A copy of the written decision shall be served by certified, first-class mail on the appellant, unless other service method shall be agreed to between the parties. 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.

5.70.230 Permittee-Requested Change to Cannabis Regulatory Permit.

To request a change to any term specified in a Cannabis Regulatory Permit, the Permittee shall submit an updated application form to the City Manager for approval prior to the change in location. The form and the fee for the processing of said change to a term of the Cannabis Regulatory Permit shall be established by the City Manager; in no event will such fee exceed the actual cost to the City of processing the change.

5.70.240 Transfer of Cannabis Regulatory Permit.

- (A) The holder of a Cannabis Regulatory Permit shall not transfer the permit to another person or entity unless and until the transferee obtains an amendment to the permit from the City Manager approving such transfer. To obtain an amendment to a Cannabis Regulatory Permit identifying a new holder of the permit, the transferee must file an application for transfer with the City Manager in accordance with the provisions of this Chapter (as though the transferee were applying for an original Cannabis Regulatory 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 adopted by the City Council, pursuant to Section 5.70.120.
- (B) Cannabis Regulatory Permits issued through the grant of a transfer by the City Manager shall be valid beginning on the day the City Manager approves the transfer of the permit and extending through the last day of the then-current fiscal year. 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 Regulatory 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 Regulatory Permit either directly or indirectly in violation of this section is hereby declared a violation of the permit and this ordinance. Such a purported transfer shall be deemed a ground for revocation of

the permit.

5.70.250 Conditional Use Permit Required to Engage in Commercial Cannabis Activity

No person may engage in any commercial cannabis activity within the City unless the person holds a valid Conditional Use Permit issued by the City and operates in compliance with all terms and conditions of said Conditional Use Permit at all times.

5.70.260 Cannabis Regulatory Permit Required to Engage in Cannabis Business Activity

No person may engage in any commercial cannabis business activity within the City unless the person holds a valid Cannabis Regulatory Permit issued by the City and operates in compliance with all terms and conditions of said Cannabis Regulatory Permit at all times.

5.70.270 Building Permits and Inspection.

Prior to commencing operations, a Cannabis Regulatory Permittee shall be subject to a mandatory building inspection and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes but is not limited to obtaining any required building permit(s), Fire Department approvals, Police Department approval, Code Enforcement, Planning, and County Health Department approvals, and any other applicable zoning and land use permit(s) and approvals and paying any associated fees or charges for such permits, approvals, or inspections.

5.70.280 Right to Occupy and to Use Property.

Prior to the City's issuance of a Cannabis Regulatory Permit pursuant to this Chapter, any person intending to open and to operate a commercial cannabis business shall first provide sufficient evidence of the legal right to occupy and to use the proposed location for the permitted activity.

5.70.290 Location and Design of Commercial Cannabis Businesses.

- (A) A commercial cannabis business must meet all applicable land use and building standards, including without limitation:
 - (1) Conformance with the City's general plan, any applicable specific plan, master plan, and design requirements.
 - (2) Compliance with all applicable zoning and related development standards pursuant to Title 15, Title 16, and Title 17 of this Code.

- (3) Construction of the business facilities in a manner that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.
 - (4) A lot that is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required for the development.
 - (5) Service by streets and/or alleys adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate.
 - (6) Availability of adequate electricity, sewerage, disposal, water, fire protection and storm drainage facilities for the intended purpose.
- (B) A commercial cannabis business shall be no closer than six hundred (600) feet from any parcel in the City designated as a Sensitive Use that is in existence at the time the permit is issued. The distance shall be determined by the horizontal distance measured in a straight line from the closest property line of the Sensitive Use to the closest property line of the lot on which the commercial cannabis business is to be located, without regard to intervening structures.

5.70.300 Authorization from the Community Development Director.

Prior to commencing operations, a commercial cannabis business must request written authorization from the Community Development Director certifying that the business is located on a site that meets all of the requirements of Sections 5.70.250 through 5.70.300, inclusive.

5.70.310 Limitations on City's Liability.

To the fullest extent permitted by law, the City of Atwater shall not assume any liability whatsoever with respect to having issued a Cannabis Regulatory Permit pursuant to this Chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any Cannabis Regulatory Permit, the applicant shall be required to meet all of the following conditions before they can receive the Cannabis Regulatory Permit:

- (A) Execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Atwater, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the Cannabis Regulatory Permit, the City's decision to approve the operation of the

commercial cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the commercial cannabis business or any of its officers, employees or agents.

- (B) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Manager.
- (C) Reimburse the City for all costs and expenses, including but not limited to legal fees and court costs, which the City may be required to pay as a result of any legal challenge related to the City's approval of the Applicant's Cannabis Regulatory Permit or related to the City's approval of a cannabis business activity. The City, at its sole discretion, may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any of the obligations imposed hereunder.

5.70.320 Records and Recordkeeping.

- (A) Each owner and operator of a commercial cannabis business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a Cannabis Regulatory Permit issued pursuant to this Chapter), or at any time upon reasonable request of the City or designee, each commercial cannabis business shall file a sworn statement detailing the number and amount of sales by the commercial cannabis business 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 owner and operator shall submit to the City or its designee a financial audit of the business's operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and a gross receipts financial audit, where applicable, as determined by the City.
- (B) Each owner and operator of a commercial cannabis business 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 business, and separately from all of the officers, managers, employees, agents, and volunteers currently employed or otherwise engaged by the commercial cannabis business. The register required by this paragraph shall be provided to the City Manager or designee upon a reasonable request.
- (C) All commercial cannabis businesses 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.

5.70.330 Fees and Charges.

- (A) No person may commence or continue any cannabis business activity in the City without first timely paying in full all fees and charges required for the operation of a commercial cannabis business. Fees and charges associated with the operation of a commercial cannabis business shall be established by resolution of the City Council and may be amended from time to time.
- (B) All commercial cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, permit, registration, and other fees required under federal, state, and local law. Each commercial cannabis business shall cooperate with the City with respect to any reasonable request to audit the commercial cannabis business's books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes or fees required to be paid during any period.

5.70.340 Security Measures.

- (A) A Cannabis Regulatory Permittee shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products and to deter and prevent the theft of cannabis or cannabis products at the commercial cannabis business. Except as may otherwise be determined by the City Manager, these security measures shall include, but shall not be limited to, all of the following:
 - (1) Perimeter fencing and exterior lighting systems (including motion sensors) for after-hours security as approved by the Police Chief and/or the Community Development Director were applicable.
 - (2) Preventing individuals from remaining on the premises of the commercial cannabis business if they are not engaging in an activity directly related to the permitted operations of the commercial cannabis business. In cases in which the individual will not voluntarily leave the premises, the cannabis employee shall contact the Police Department.
 - (3) Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
 - (4) All finished cannabis goods at non-retail commercial cannabis businesses shall be stored in secured and locked vault or vault-equivalent during non-operating hours. All safes and vaults used to store cash and/or cannabis goods shall be compliant with Underwriter Laboratories burglary-resistant and

fire-resistant standards. All cannabis and cannabis products, including live clone plants that are being sold, shall be kept in a manner as to prevent diversion, theft, and loss.

- (5) Installing 24-hour security surveillance cameras of at least high-definition (HD) quality to monitor all entrances and exits to and from the premises, all interior spaces within the commercial cannabis business which are open and accessible to the public, all interior spaces where cannabis, cash, or currency, is being stored for any period of time on a regular basis and all interior spaces where diversion of cannabis could reasonably occur. All cameras shall record in color. All exterior cameras shall be in weather-proof enclosures, shall be located so as to minimize the possibility of vandalism, and shall have the capability to automatically switch to black and white in low light conditions. The commercial cannabis business shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the City Manager, and that it is compatible with the City's software and hardware. In addition, if required, remote and real-time, live access to the video footage from the cameras shall be provided to the Police Chief at the expense of the permittee. Video recordings shall be maintained for a minimum of ninety (90) days and shall be made available to the Police Chief upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business and shall be capable of enlargement via projection or other means. Internet Protocol address information shall be provided to the Police Department by the commercial cannabis business, to facilitate remote monitoring of security cameras by the Department or its designee. Each business shall have network security protocols that are certified by Underwriters Laboratories.
- (6) Sensors shall be installed to detect entry and exit from all secure areas and shall be monitored in real time by a security company licensed by the State of California Bureau of Security and Investigative Services.
- (7) Panic buttons shall be installed in all commercial cannabis businesses with direct notification to the Police Department dispatch and shall be configured to immediately alert dispatch for the Police Department.
- (8) Having a professionally installed, maintained, and monitored real-time alarm system by a security company licensed by the State of California Bureau of Security and Investigative Services. The licensee shall be required to obtain an alarm permit from the Police Department.
- (9) Any security measures, such as bars, installed on the windows or the doors of the commercial cannabis business shall be installed only on the interior of the building.

- (10) Uniformed security personnel shall be on-site 24 hours a day to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities. The City Manager may in his or her discretion establish an alternative to on-site 24-hour security personnel at the request of the permittee. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager, with such approval not to be unreasonably withheld.
 - (11) Each commercial cannabis business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
 - (12) Entrance areas are to be locked at all times and under the control of a designated responsible party that is either; (a) an employee of the commercial cannabis business; or (b) a licensed security professional.
 - (13) Each commercial cannabis business shall have an accounting software system in place to provide point of sale data as well as audit trails of both product and cash, where applicable.
 - (14) Each commercial cannabis business shall demonstrate to the Police Chief, City Manager or their designees, compliance with the state's track and trace system for cannabis and cannabis products.
 - ~~(15)~~ Each commercial cannabis business shall have a professionally installed video surveillance system, access control and intrusion alarm systems designed to protect the inventory, facility, and employees. Each business shall have network security protocols that are certified by Underwriters Laboratories.
 - (16) Exterior vegetation shall be planted, altered, and maintained in a fashion that precludes its use as a hiding place for persons on the premises.
 - (17) Emergency access and emergency evacuation plans that are in compliance with state and local fire safety standards.
 - (18) Installation of "mosquitos" (high-pitch frequency devices) as a deterrent to vandalism/loitering.
 - (19) Other such reasonable security measures may be deemed appropriate by the City Manager or designee.
- (B) Each commercial cannabis business shall identify a designated security

representative/liaison to the City, who shall be reasonably available to meet with the City Manager and/or Police Chief regarding any security related measures and/or operational issues. The designated security representative/liaison shall, on behalf of the commercial cannabis business, annually maintain a copy of a current security plan on the premises of the business, to present to the City Manager and/or Police Chief, upon request, that meets the following requirements:

- (1) Confirms that a manager will be on duty during business hours and will be responsible for monitoring the behavior of employees.
 - (2) Identifies all managers of the commercial cannabis business and their contact phone numbers.
 - (3) Confirms that first aid supplies and operational fire extinguishers are located in the service areas and the manager's office.
 - (4) Confirms that burglar, fire, and panic alarms are operational and monitored by a licensed security company 24 hours a day, seven days a week, and provides contact information for each licensed security company.
 - (5) Identifies a sufficient number of licensed, interior, and exterior security personnel who will monitor individuals inside and outside the commercial cannabis business, the parking lot, any adjacent property under the business' control, and ensure that the parking lot is cleared of employees and their vehicles one-half hour after closing.
- (C) As part of the application and licensing process each commercial cannabis business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, any hazardous materials that may be used by the business, and any currency.
- (D) The commercial cannabis business shall cooperate with the City whenever the City Manager makes a request, with or without prior notice, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.
- (E) A commercial cannabis business shall notify the City Manager within twenty-four (24) hours after discovering any of the following:
- (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager.
 - (2) Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.

- (a) The loss or unauthorized alteration of records related to cannabis, customers or employees or agents of the commercial cannabis business.
 - (b) Any other breach of security.
- (F) Compliance with the foregoing requirements shall be verified by the City Manager prior to commencing business operations. The City Manager may supplement these security requirements once operations begin, subject to review by the City Manager if requested by the business owner.

5.70.350 General Operating Requirements.

- (A) Commercial cannabis businesses may operate only during the hours specified in the Cannabis Regulatory Permit issued by the City.
- (B) Restriction on Sales and Consumption. Cannabis shall not be consumed by any person on the premises of any commercial cannabis business, except as provided in Section 5.70.470 of this Chapter. No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages or tobacco on or about the premises of the commercial cannabis business.
- (C) No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a Cannabis Regulatory Permit, or on any of the vehicles owned or used as part of the commercial cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- (D) Reporting and Tracking of Product and of Gross Sales. Each commercial cannabis business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the commercial cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The commercial cannabis business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the City Manager prior to being used by the permittee.
- (E) All cannabis and cannabis products sold, distributed, or manufactured shall be cultivated, manufactured, and transported by state licensed facilities that maintain operations in full conformance with the State and local regulations.
- (F) Emergency Contact. Each commercial cannabis business shall provide the City Manager with the name, telephone number (both land line and mobile, if available)

of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.

(G) Signage and Notices.

- (1) In addition to the requirements otherwise set forth in this section, business identification signage for a commercial cannabis business shall conform to the requirements of Chapter 17.69, Sign Regulations, of the Atwater Municipal Code, including, but not limited to, seeking the issuance of a City sign permit.
- (2) No signs placed on the premises of a commercial cannabis business shall obstruct any entrance or exit to the building or any window.
- (3) Each entrance to a commercial cannabis business shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the commercial cannabis business is prohibited.
- (4) No commercial cannabis business shall advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises of the commercial cannabis business or elsewhere including, but not limited to, the public right-of-way.
- (5) Signage shall not depict any image of cannabis or cannabis products. No banners, flags, snipe signs, billboards, or other prohibited signs may be used at any time.

(H) Minors.

- (1) Persons under the age of twenty-one (21) years shall not be allowed on the premises of a commercial cannabis business and shall not be allowed to serve as a driver for a mobile delivery service. It shall be unlawful and a violation of this Chapter for any person to employ any person at a commercial cannabis business who is not at least twenty-one (21) years of age.
- (2) The entrance to the commercial cannabis business shall be clearly and legibly posted with a notice that no person under the age of twenty-one (21) years of age is permitted to enter upon the premises of the commercial cannabis business.
- (3) Notwithstanding Section 5.70.360(H)(1), persons aged 18 to 20 years shall be allowed on the premises of a commercial cannabis business if they can produce a physician's recommendation. In that event, such persons can lawfully purchase cannabis for the sole purpose of addressing the medical

need that is the subject of the physician's recommendation.

- (I) Odor Control. Odor control devices and techniques shall be incorporated in all commercial cannabis businesses to ensure that odors from cannabis are not detectable off-site. Commercial cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. As such, commercial cannabis businesses must install and maintain the following equipment, or any other equipment which the Community Development Director or his/her designee(s) determines is a more effective method or technology:
 - (1) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally.
 - (2) An air system that creates negative air pressure between the commercial cannabis business's interior and exterior, so that the odors generated inside the commercial cannabis business are not detectable on the outside of the commercial cannabis business.
- (J) Display of Regulatory Permit and City Business License. The original copy of the Cannabis Regulatory Permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the commercial cannabis business in a location readily visible to the public.
- (K) Loitering. The owner and/or operator of a commercial cannabis business shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises. The commercial cannabis business shall notify the Police Department if anyone continues to loiter around the building or premises after all reasonable action has been taken to remove the individual(s) and the individual has failed to leave in a timely manner.
- (L) Each cannabis operator shall establish minimum training standards for all employees. The City Manager shall have the discretion to require other training for the business operations should the City identify deficiencies or non-compliance issues with City or state requirements.

5.70.360 Amendments to General Operating Requirements.

The City Manager may develop other commercial cannabis business operational requirements or regulations as are determined to be necessary to protect the public health, safety, and welfare.

5.70.370 Additional Operating Requirements for Store Front/Retail Facilities.

- (A) No more than the number of cannabis retailers adopted by Council resolution may operate within the City at any one time and shall be issued a permit by the City.
- (B) Retailers shall verify the age and all necessary documentation of each individual to ensure the customer is not under the age of eighteen (18) years. If the potential customer is 18 to 20 years old, retailer shall confirm the customer's possession of a valid doctor's recommendation and/or an identification card under Health and Safety Code Section 11362.71 (Medical Marijuana Card), as may be amended or renumbered from time to time. For adult-use purchases, retailers shall verify that all customers are 21 years of age or older for the purchase of cannabis or cannabis products.
- (C) Individuals must show their government-issued identification, and, in the case of medical cannabis facilities, their physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71, in order to gain access into a storefront retailer. The government-issued identification and, if applicable, doctor's recommendation or cannabis card must also be shown at the point-of-sale station at the time of purchase. Doctor recommendations are not to be obtained or provided at the retail location.
- (D) Uniformed licensed security personnel shall be employed at all storefront retail sites to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities, in accordance with Section 5.70.350(a)(10). Security personnel may be allowed to carry firearms if authorized by the Police Chief. All security personnel hired or contracted for by the permittee shall be licensed by the Bureau of Security and Investigative Services and shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.
- (E) Storefront retailers may have only that quantity of cannabis and cannabis products to meet the daily demand readily available for sale on-site in the retail sales area of the retailer. Additional product may be stored in a secured, locked area to which customers, vendors, and visitors shall not have access.
- (F) All restroom facilities shall remain locked and under the control of management.
- (G) Retailers authorized to conduct retail activities shall only serve customers who are within the permitted premises, or at a delivery address that meets the requirements of this subdivision.
 - (1) The sale and delivery of cannabis goods shall not occur through a pass-

through window or a slide-out tray to the exterior of the premises.

- (2) Retailers shall not operate as or with a drive-in or drive-through at which cannabis goods are sold to persons within or about a motor vehicle.
- (3) No cannabis goods shall be sold and/or delivered by any means or method to any person within a motor vehicle.
- (4) All cannabis goods sold by a retail business shall be contained in child-resistant packaging.
- (5) Retailers shall record point-of-sale areas and areas where cannabis goods are displayed for sale on the video surveillance system. At each point-of-sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.
- (I) Limited Access Areas. A storefront retailer shall establish limited-access areas, as defined by this Chapter, which permit only authorized individuals to enter the limited-access areas. Authorized individuals include individuals employed by the retailer as well as any outside vendors, contractors, or other individuals conducting business that requires access to the limited access area. All individuals granted access to the limited access area shall be at least 21 years of age, and if not employed by the retailer, shall be escorted at all times by an employee of the permittee. A retailer shall maintain a log of all individuals who are not employees who are granted access to the limited access area. These logs shall be made available to the City Manager, Police Chief, or their designees upon request.
- (J) Operating hours of a store front or non-store front retailer's business shall be limited to the hours and days specified in the Cannabis Regulatory Permit issued by the City.

5.70.380 Additional Operating Requirements for Distributors.

Distributors shall be required to conduct all permitted operations in a manner pursuant to Business and Professions Code Section 26080, as may be amended or renumbered from time to time and shall be subject to state and local law. Distributors may be subject to additional regulations as determined from time to time as more regulations are developed under this Chapter and any subsequent State of California legislation regarding the same.

5.70.390 Additional Operating Requirements for Testing Labs.

- (A) Testing Labs shall be required to conduct all testing in a manner pursuant to Business and Professions Code Section 26100 *et seq.*, as may be amended or renumbered from time to time and shall be subject to state and local law. Each

Testing Lab may be subject to additional regulations as determined from time to time as more regulations are developed under this Chapter and any subsequent State of California legislation regarding the same.

- (B) Testing Labs shall conduct all testing in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling using verified methods.
- (C) All cannabis testing laboratories performing testing shall obtain and maintain ISO/IEC 17025 accreditation as required by the Department of Cannabis Control.

5.70.400 Additional Operating Requirements for Cannabis Manufacturing: Edibles and Other Cannabis Products; Sale of Edible and Other Cannabis Products.

- (A) Cannabis manufacturing shall only be permitted pursuant to Business and Professions Code Section 26130 *et seq.*, as may be amended, or renumbered from time to time and shall be subject to state and local law. Each manufacturing site may be subject to additional regulations as determined from time to time as more regulations are developed under this Chapter and any subsequent State of California legislation regarding the same.

5.70.410 Additional Operating Requirements for Cultivators.

- (A) Cannabis cultivation shall only be permitted pursuant to Business and Professions Code Section 26060 *et seq.*, as may be amended, or renumbered from time to time and shall be subject to state and local law. Each cultivation site may be subject to additional regulations as determined from time to time as more regulations are developed under this Chapter and any subsequent State of California legislation regarding the same.
- (B) Outdoor Cultivation Prohibited. The cultivation of all cannabis must occur indoors. All outdoor cultivation, including outdoor greenhouse cultivation, is prohibited.
- (C) Cannabis plants shall not be visible from a public or private road, sidewalk, park, or any common public viewing area.
- (D) Cultivator shall only be allowed to cultivate the square feet of canopy space permitted by state law. Research and development area shall be limited to ten percent (10%) of the total permitted canopy square footage.
- (E) Cannabis cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters.

- (F) The cultivation of cannabis shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the cultivation site, visitors to the area, neighboring properties, and the end users of the cannabis being cultivated, to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the cannabis being cultivated; and to safeguard against the diversion of cannabis.
- (G) All applicants for a cultivation permit shall submit the following information, in addition to the information generally otherwise required for a Cannabis Regulatory Permit:
 - (1) A cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, runoff, and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of the cultivation activities (indoor, mixed-light) and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting (indoor, mixed-light).
 - (2) A description of a legal water source, irrigation plan, and projected water use.
 - (3) Identification of the source of electrical power and plan for compliance with applicable Building Codes and related codes.
 - (4) Plan for addressing public nuisances that may derive from the cultivation site.

5.70.420 Delivery Requirements for Store Front Retail, Non-Store Front Retail, and Microbusinesses.

- (A) Non-Store Front Retailer Permit Owners and Operators are required to verify the age and the necessary documentation of each customer. They must ensure that medical customers are at least eighteen (18) years of age and verify that the customer has a valid doctor's recommendation. Doctor recommendations are not to be obtained or provided at the retail location. In the case of adult-use customers, they must verify that the customer is at least twenty-one (21) years of age. Sales shall only be made to persons matching this criteria.
- (B) Operating hours of the Non-Store Front Retailer Permit shall be limited to the hours and days specified in the Cannabis Regulatory Permit issued by the City.
- (C) Prior to commencing delivery operations, a cannabis Store Front Retailer,

cannabis Non-Store Front Retailer and Microbusiness shall provide the following information to the City:

- (1) Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.
 - (2) The year, make, model, color, license plate number, and numerical Vehicle Identification Number (VIN) for any and all vehicles that will be used to deliver cannabis goods.
 - (3) Proof of insurance for any and all vehicles being used to deliver cannabis goods.
- (D) The permittee shall provide the City with any changes to the information required by this section in writing within thirty (30) calendar days.

5.70.430 Operating Requirements for Out-of-City Delivery Services.

Prior to commencing operations, a retail business operating a delivery service that is based outside of the City of Atwater shall provide the City Manager with evidence of a valid state license for a commercial cannabis business on whose authorization the delivery service is performing the delivery function.

5.70.440 Permissible Delivery Locations and Customers.

Cannabis delivery businesses permitted to engage in delivery of cannabis and cannabis products inside the City of Atwater are subject to the following requirements:

- (A) A permitted commercial cannabis business shall comply with all requirements of state and local law pertaining to the Cannabis Regulatory Permit and all subsequent policies, procedures and regulations which may be amended by the City Manager from time to time in order to enforce this Chapter.
- (B) Any kiosk, iPad, tablet, smartphone, fixed location, or technology platform, whether manned or unmanned, other than a storefront retail location permitted by the City, that facilitates, directs, or assists the retail sale or delivery of cannabis or cannabis products is prohibited and shall be a violation of this Chapter.

5.70.450 Promulgation of Additional Regulations, Standards, and Other Legal Duties.

- (A) In addition to any regulations adopted by the City Council, the City Manager is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of Cannabis Regulatory Permit, the ongoing operation of commercial cannabis businesses and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes

of this Chapter.

- (B) Regulations promulgated by the City Manager shall become effective upon date of publication. Commercial cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager.

5.70.460 Community Relations Contact Person.

- (A) Each commercial cannabis business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the commercial cannabis business can be provided. Each commercial cannabis business shall also provide the above information to all businesses and residences located within one hundred (100) feet of the commercial cannabis business.
- (B) During the first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from each commercial cannabis business holding a permit issued pursuant to this Chapter shall, upon request, attend meetings with the City Manager, and other interested parties as deemed appropriate by the City Manager, to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the owner, manager, and community relations representative from each such commercial cannabis business shall meet with the City Manager when and as requested by the City Manager.

5.70.470 On-Site Consumption and Temporary Cannabis Event Permits

- (A) Except as expressly permitted in this section, no commercial cannabis business may authorize the consumption or use of any cannabis, tobacco, or alcohol products within the commercial cannabis business's footprint, inclusive of all indoor and outdoor facilities.
- (B) A commercial cannabis business may apply to the City Manager for a temporary cannabis event permit, authorizing limited consumption at the commercial cannabis business facility, by submitting a request in writing that certifies each of the following:
 - (1) The consumption will not occur within 1,000 feet of any sensitive use, as that term is defined by this Chapter.
 - (2) The consumption will not occur during the hours of 12:00 a.m. to 8:00 a.m.
 - (3) The consumption will occur within an area of the property that is set back a minimum of 50 feet from the lot lines.

- (4) No alcohol or tobacco products will be sold or consumed as part of the event.
- (5) Access to any area where sale or consumption of cannabis is occurring as part of the event is limited to persons 21 years of age or older.
- (C) An application for a temporary cannabis event permit under this Section must be submitted at least 45 days prior to the proposed event to be accepted for processing.
- (D) The City Manager reserves the discretion to deny or approve all permit requests, subject to consultation with the Police Department and any other City departments. The City Manager will notify the applicant of the approval or denial of the permit within 30 days of receipt of the application.
- (E) The City Manager may place conditions upon the issuance of a temporary cannabis event permit. Failure to remain in compliance with any such condition will result in the immediate termination of the event by the City and any other actions that the City may be legally entitled to take against the violating business.

5.70.480 Fees Deemed Debt to the City.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City that is recoverable via an authorized administrative process as set forth in the City ordinance or in any court of competent jurisdiction.

5.70.490 Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

5.70.500 Inspection and Enforcement.

- (A) The City Manager, or designee, charged with enforcing the provisions of the City of Atwater Municipal Code, or any provision thereof, may enter the location of a commercial cannabis business at any time, without notice, and inspect the location of any commercial cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.
- (B) It is unlawful for any person having responsibility over the operation of a commercial cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings

or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law.

- (C) The City Manager, or designee charged with enforcing the provisions of this Chapter may enter the location of a commercial cannabis business at any time during the hours of operation and without notice to obtain samples of the cannabis to test for public safety purposes. Any samples obtained by the City of Atwater shall be logged, recorded, and maintained in accordance with established procedures by the City of Atwater's City Manager or these regulations.

5.70.510 Violations.

In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to Section 1.01.110 of this Code. Each and every violation of the provisions of this Chapter constitutes a misdemeanor and is hereby deemed unlawful and a public nuisance. Further, any person who violates any provision of this Chapter is liable for administrative penalties of not less than \$250 or more than \$25,000 for each day the violation continues. The severity of the penalty imposed shall depend on the severity of the violation at the City's discretion. Any person found in violation of this code and assessed an administrative penalty accordingly may appeal the amount of such penalty to the City Council by following the procedures set forth in Chapter 1.12 of this Code. The City reserves the right to pursue any available legal remedy to address violations of this Chapter.

SECTION 2. CEQA. The proposed amendment to the Atwater Municipal Code is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Cannabis businesses will be required to meet all local, state, and federal health and safety regulations to ensure that there are no significant environmental impacts to the cannabis use sites and surrounding properties. The businesses authorized under this ordinance are similar to already existing permitted general uses in the affected areas, such as retail, with the only difference being the product sold or consumed (i.e., cannabis). No update to the zoning code is proposed at this time, meaning this ordinance will not create negative environmental impacts or result in physical changes to the environment. There are no outdoor commercial cultivation activities permitted under this ordinance. Any future updates to zoning or permitted land uses in Atwater connected to this cannabis ordinance will require separate, additional CEQA analysis.

SECTION 3. CEQA. The City Council hereby determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 et seq.) pursuant to State CEQA Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h), each as separate and independent bases. Pursuant to State CEQA Guidelines, Section 15061(b)(3), it can be seen with certainty that the Ordinance will not have a significant effect on the environment because it would require a regulatory permit and impose operating criteria on cannabis retailers. Additionally, Business & Professions Code Section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity that includes applicable environmental review.

SECTION 4. Severance. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Publication. This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

SECTION 6. Effective Date. This ordinance shall become effective thirty days from the date of adoption.

INTRODUCED:	December 12, 2022
ADOPTED:	January 9, 2023
AYES:	Button, Ambriz, Cale, Nelson
NOES:	Raymond
ABSENT:	None

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK