


CERTIFICATION OF CITY CLERK

ORDINANCE NO. 298.1

I, Suzanne Guzzetta, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. 298.1 of the City of Milpitas, that this Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 5th of March, 2024, and that a summary thereof was published in the local newspaper and posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 15th day of March, 2024.



Suzanne Guzzetta
Milpitas City Clerk

REGULAR

NUMBER: 298.1

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE MILPITAS MUNICIPAL CODE TITLE XI (“ZONING, PLANNING AND ANNEXATION”), CHAPTER 10 (“ZONING”), SECTION 13 (“SPECIAL USES”), SUBSECTION 13.15 (“CANNABIS USES”) RELATING TO THE PROHIBITION AND REGULATION OF CANNABIS USES, ESTABLISHMENTS, AND OPERATIONS TO THE FULLEST EXTENT ALLOWED BY STATE LAW, AND MAKING FINDINGS OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15061(b)(3), 15183, 15305, AND 15378

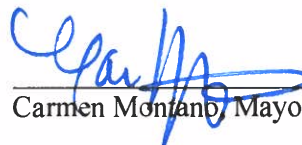
HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of February 20, 2024, upon motion by Vice Mayor Chua and was adopted (second reading) by the City Council at its meeting of March 5, 2024, upon motion by Vice Mayor Chua. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:	(5)	Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo, Lien and Phan.
NOES:	(0)	None.
ABSENT:	(0)	None.
ABSTAIN:	(0)	None.

ATTEST:


Suzanne Guzzetta, City Clerk

APPROVED:


Carmen Montano, Mayor

APPROVED AS TO FORM:


Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, in November 2016, California voters passed Proposition 64, the “Control, Regulate and Tax Adult Use of Marijuana Act” (“Proposition 64” or the “Adult Use of Marijuana Act” or “AUMA”), which beginning January 1, 2017, legalized and regulated commercial cannabis for adult-use and medicinal-use; and

WHEREAS, in June 2017, the California Legislature passed a budget trailer bill, Senate Bill 94, the “Medicinal and Adult Use Cannabis Regulation and Safety Act” (“MAUCRSA”), which integrated prior laws with Proposition 64 to create a unified regulatory framework and system of business licensing at the State level for both adult-use and medicinal-use cannabis; and

WHEREAS, both MAUCRSA and Proposition 64 expressly recognize, preserve, and do not supersede or limit the authority of local jurisdictions to adopt and enforce ordinances that regulate cannabis businesses licensed at the State level, including by completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA (Business & Professions Code, § 26200); and

WHEREAS, on January 17, 2017, the City Council adopted Urgency Ordinance No. 291 pursuant to Government Code Section 65858, establishing a forty-five (45) day moratorium on all cannabis uses to the extent allowed by law in light of the passage of Proposition 64; and

WHEREAS, on February 21, 2017, the City Council adopted Urgency Ordinance No. 291.1 pursuant to Government Code Section 65858, extending the moratorium on all cannabis uses for a period of 10 months and 15 days; and

WHEREAS, on January 16, 2018, the City Council adopted Urgency Ordinance No. 291.2 pursuant to Government Code Section 65858, extending the moratorium for an additional 12-month period for the full two years authorized under State law, to allow the City to complete its study of potential cannabis regulations; and

WHEREAS, during the time of that moratorium, the City Council established a Cannabis Subcommittee and in coordination with City staff conducted an extensive study of potential options for local cannabis regulations, including numerous meetings and substantial community outreach, polling, surveys, and analysis that the City Council again takes notice of now; and

WHEREAS, from that study and having fully considered the issues and potentials for regulation, the City Council duly passed by unanimous vote Ordinance No. 298 and enacted the currently operative version of Subsection XI-10-13.15 of the Milpitas Municipal Code, which to the fullest extent allowed by State law regulates cannabis cultivation for personal use and prohibits all commercial cannabis uses within the City’s jurisdiction, including cannabis delivery; and

WHEREAS, in September 2022, the California Legislature passed Senate Bill 1186 (“SB 1186”), which enacted the “Medicinal Cannabis Patients’ Right of Access Act” (“MCPRAA”) and, among other things, amended Business and Professions Code section 26200 to make the provisions of MCPRAA an exception to the broad reservation of local regulatory authority in subsections (a)(1) and (a)(2) of Section 26200; and

WHEREAS, MCPRAA prohibits local jurisdictions from adopting or enforcing any regulation that directly or effectively prohibits the retail sale by delivery of medicinal cannabis or medicinal cannabis products to medicinal cannabis patients or their primary caregivers in a timely and readily accessible

manner and in the types and quantities that are sufficient to meet the demand for medicinal cannabis patients within the local jurisdiction; and

WHEREAS, the City of Milpitas has a vested and legitimate interest in protecting the public health, safety, and welfare by adopting reasonable regulations, including prohibitions, on the retail sale and personal cultivation of commercial cannabis whether for medicinal or non-medicinal use; and

WHEREAS, the City of Milpitas has a vested and legitimate interest in regulating the delivery of medicinal cannabis to ensure such deliveries are conducted in a lawful and reasonable manner that affirmatively protects the health, safety, and welfare of the community and the peace, quiet, and enjoyment of all persons, including by prohibiting the delivery of anything other than the medicinal cannabis and medicinal cannabis products to the minimum extent now required by State law ; and

WHEREAS, if required to allow the delivery of medicinal cannabis and medicinal cannabis products, the City of Milpitas has a vested and legitimate interest in ensuring that such deliveries actually reach qualifying patients and do not fall into the hands of others, including minors; and

WHEREAS, the City of Milpitas has the lawful right to act upon the needs and wishes of the Milpitas community, including as expressed during the extensive surveys, polls, meetings, and public comment that led to the City's enactment of Subsection XI-10-13.15; and

WHEREAS, the City Council reaffirms and finds still true the study, consideration, deliberation, and discussions that formed the basis for the City's enactment of Ordinance No. 298; and

WHEREAS, the City Council finds and declares based upon a full consideration of all the facts before it that there exists and foreseeably will continue to exist a more than sufficient supply of medicinal cannabis and medicinal cannabis products capable of timely and readily accessible delivery from locations outside of the City's jurisdiction in the types and quantities meeting the demand by medicinal cannabis patients within the City's jurisdiction; and

WHEREAS, the City Council finds and declares based upon a full consideration of all the facts before it that there exist more than sufficient opportunities for the establishment of additional cannabis operations outside of the City's jurisdiction to meet any future increase in demand; and

WHEREAS, the City Council finds and declares that it's local regulatory scheme, as herein amended, is consistent with SB 1186 and will not prevent medicinal cannabis patients or their primary caregivers from obtaining medicinal cannabis in a timely and readily accessible manner in the types and quantities that are sufficient to meet demand within the City's jurisdiction; and

WHEREAS, all legal prerequisites to the adoption of this ordinance have been met.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI (“ZONING, PLANNING AND ANNEXATION”), CHAPTER 10 (“ZONING”), SECTION 13 (“SPECIAL USES”), SUBSECTION 13.15 (“CANNABIS USES”)

Title XI, Chapter 10, Section 13, Subsection 13.15 of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-13.15 Cannabis Uses

- A. Purpose. The purpose of this Subsection is to prohibit to the fullest extent allowed by State Law the establishment and operation of all commercial cannabis uses within the City of Milpitas, including all cannabis dispensaries, cannabis retailers, cannabis manufacturers, cannabis microbusinesses, cannabis testing laboratories, cannabis distribution, cannabis cultivation, and delivery of cannabis. It is also the intent of this Subsection to regulate indoor cannabis cultivation, and to prohibit all outdoor cultivation, for personal use, including by qualified patients and primary caregivers. It is also the intent of this Subsection to entirely prohibit the delivery of non-medical cannabis and only allow the delivery of medicinal cannabis directly to medicinal cannabis patients or their primary caregivers to the minimum extent required by State law, subject to all laws and the additional regulations adopted here.
- B. Finding and Declaration. The City finds and declares that this local regulatory scheme will not prevent medicinal cannabis patients or their primary caregivers from obtaining medicinal cannabis in a timely and readily accessible manner and in types and quantities that are sufficient to meet demand within the City’s jurisdiction.
- C. Definitions. For purposes of this Subsection, the following definitions shall apply:
 - 1. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code.
 - 2. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
 - 3. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products. Whether made directly by the individual or entity or indirectly through a third-party service or other intermediary, an offer to deliver includes any communication, action, or conduct that could be reasonably understood to convey a willingness to engage in cannabis delivery irrespective of the person or entity’s actual or specific intent and includes advertisements, websites, or other media making the same suggestion.
 - 4. “Cannabis delivery service” or “delivery service” means any person or entity engaged in cannabis delivery or attempting or offering to engage in cannabis delivery.

5. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the State distributor license(s), including, but not limited to, cannabis storage, quality control and collection of State cannabis taxes.
6. "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
7. "Cannabis microbusiness" means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
8. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001.
9. "Cannabis retailer" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. The term "cannabis retailer" includes any nonprofits that may be licensed under Business and Professions Code, Section 26070.5. For purposes of this Chapter, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended.
10. "Cannabis testing laboratory" means a facility, entity, or site in the State that offers or performs tests of cannabis or cannabis products.
11. "Chief of Police" means the Chief of Police of the City of Milpitas or his or her designee.
12. "City Attorney" means the City Attorney of the City of Milpitas or his or her designee.
13. "City Clerk" means the City Clerk of the City of Milpitas or his or her designee.
14. "City Manager" means the City Manager of the City of Milpitas or his or her designee.
15. "Commercial cannabis use" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis microbusinesses, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, Section 26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include those activities allowed for personal use by persons 21 years of age or older, without any compensation whatsoever, in strict accordance with Health and Safety Code, Section 11362.1 and does not include the activities of a qualified patient or a primary

caregiver that are exempt from State licensure pursuant to Business and Professions Code, Section 26033.

16. "Enforcement Authority" means the Chief of Police, the City Attorney, or any other person or persons designated by the Milpitas Municipal Code or the City Manager to enforce this Subsection.
17. "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
18. "Medicinal cannabis" or "medicinal cannabis products" shall have the same meaning as the definition set forth in Business and Professions Code, Section 26001.
19. "Medicinal cannabis patient" means any one of the following:
 - a. A "qualified patient," as defined in Health and Safety Code, Section 11362.7, who possesses a currently valid physician's recommendation that complies with both Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code as well as all rules, regulations, and guidelines adopted by the Medical Board of California.
 - b. A "person with an identification card," as defined in Section 11362.7 of the Health and Safety Code, who possesses a currently valid identification card issued in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.
20. "Non-medicinal cannabis" or "non-medicinal cannabis products" shall mean cannabis or cannabis products, respectively, that does not qualify as medicinal cannabis, including commercial cannabis intended to be sold for non-medicinal use by an adult 21 years of age or older pursuant to State law.
21. "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
22. "Personal cultivation" means cannabis cultivation for a natural person's own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. "Personal use" also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.
23. "Primary caregiver" means the primary caregiver for a medicinal cannabis patient and shall have the same meaning as the definition set forth in Health and Safety Code, Section 11362.7.
24. "Private residence" means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes.

D. Personal Cultivation of Cannabis.

1. Indoor Personal Cultivation. The indoor personal cultivation of cannabis is prohibited except in compliance with the following:

- a. Cannabis cultivation shall only occur indoors at a private residence, or inside an accessory structure located upon the grounds of a private residence.
 - b. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 - c. Persons engaging in indoor cultivation must comply with all State and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, and with Health and Safety Code Sections 11362.1 and 11362.2.
 - d. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the Building, Electrical, and Fire Codes as adopted and amended by the City of Milpitas.
 - e. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
 - f. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. "Fully enclosed and secure structure" means a space within a building, greenhouse or other legal structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
2. Outdoor Personal Cultivation Prohibited. Outdoor personal cultivation of cannabis is prohibited in all zoning districts in the City of Milpitas.

E. Commercial Cannabis Uses.

1. Commercial Cannabis Uses Prohibited. All medical and adult-use commercial cannabis uses as defined herein are prohibited from establishing or operating within the City of Milpitas. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a commercial cannabis use in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

F. Cannabis Deliveries.

1. Deliveries Generally Prohibited. Except as set forth in Subsection XI-10-13.15(F)(2), the ban on commercial cannabis uses also prohibits the operation of a cannabis delivery service to customers in the City of Milpitas, including those deliveries originating from a physical location outside of the City. A cannabis delivery service may not deliver, attempt to deliver, or offer to deliver cannabis or cannabis products in violation of this Subsection. Nothing in this Subsection is intended to, nor shall it be construed to, permit and/or legalize any delivery operation, use, and/or activity that is otherwise prohibited under this Subsection and/or any other law. Rather, this Subsection is intended to prohibit the delivery of commercial cannabis to the fullest extent allowed by state law, including by entirely prohibiting the delivery of non-medicinal cannabis.
2. Direct Deliveries to Medicinal Cannabis Patients or Primary Caregivers Excepted. The direct delivery of medicinal cannabis to a specifically identified medicinal cannabis patient or the primary caregiver for a specifically identified medicinal cannabis patient within the City's jurisdictional limits from a location outside the City's jurisdictional limits is not prohibited by

this Subsection only if such deliveries fully comply with each and every one of the following operating conditions:

- a. All deliveries must be made directly to a specifically identified medicinal cannabis patient or the primary caregiver for a specifically identified medicinal cannabis patient by a duly licensed cannabis delivery service. Prior to delivery, the delivery service must obtain a copy of written documentation for the identified medicinal cannabis patient proving the patient possess a physician's recommendation for medicinal cannabis that is valid at the time of delivery.
 - i. For deliveries to a medicinal cannabis patient, that written documentation must include either a currently valid copy of a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code or a currently valid identification card issued in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.
 - ii. For deliveries to a primary caregiver for a medicinal cannabis patient, that written documentation must include either a currently valid identification card for the identified patient issued to the primary caregiver in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code or both a currently valid copy of a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code and proof that primary caregiver has consistently assumed responsibility for the housing, health, or safety of the identified patient.
 - iii. Written documentation received by a delivery service for this purpose shall be maintained confidentially and only disclosed in compliance with all applicable laws.
- b. All deliveries must be to a fixed address for a specifically identified medicinal cannabis patient.
 - i. For deliveries to a medicinal cannabis patient, that fixed address must be the patient's private residence.
 - ii. For deliveries to a primary caregiver for a medicinal cannabis patient, that fixed address must be the primary caregiver's primary business address.
 - iii. Deliveries cannot be to a post office box, any other form of mail, package, or parcel pickup location or locker, or to a mail, package, or parcel receiving agency or business.
 - iv. Delivery must be to a person 18 years of age or older. The delivery service must record the name of the person receiving the delivery.
 - v. Upon delivery, and prior to completing delivery, the delivery must be signed for by the identified medicinal cannabis patient or the primary caregiver for the identified medicinal cannabis patient.
- c. All deliveries must occur between the hours of 6:00 a.m. Pacific Time and 10:00 p.m. Pacific Time. Deliveries may not occur in a manner that would tend to disturb the peace, quiet, and/or enjoyment of a reasonable person of normal sensitivity residing nearby.

- d. The cannabis delivery service must maintain a log or other record stating the date, time, quantities, and products for each delivery as well as the name of the identified medicinal cannabis patient and the name of any primary caregiver for the delivery.
 - e. The cannabis delivery service must retain for a period of at least two years copies of all records, documentation, signatures, permits, and licenses required by this Subsection and present them to a law enforcement officer upon demand.
 - f. The cannabis delivery service must fully comply with all applicable laws, including this Subsection and Division 10 of the Business and Professions Code, all rules and regulations promulgated by the Department of Cannabis Control, including in Title 4, Division 19 of the California Code of Regulations, and all guidelines, procedures, and regulations promulgated pursuant to this Subsection by the City Manager and/or his or her designee.
 - g. Deliveries of medicinal cannabis may not include anything other than medicinal cannabis and medicinal cannabis products. Specifically, deliveries of medicinal cannabis may not include delivery of cannabis accessories or promotional materials, as defined by Section 15000 of Title 4, Division 19, Chapter 1, Article 1 of the California Code of Regulations, or branded merchandise of any kind.
3. **Business Tax and License.** A cannabis delivery service must obtain a business tax license from the City pursuant to Title III, Chapter 1 of this Code prior to commencing any delivery service within the City's jurisdiction or offering or attempting to deliver within the City's jurisdiction, even if delivering from a physical location outside of the City. A cannabis delivery service must pay all state and local taxes or fees for delivery services occurring within the City's jurisdiction, including taxes or fees imposed by or owed to the City.
4. **Registration.** A cannabis delivery service must register with the Milpitas Police Department in a form acceptable to the Chief of Police prior to commencing any delivery service within the City's jurisdiction or offering or attempting to deliver within the City's jurisdiction, even if delivering from a physical location outside of the City. That registration must be signed by the registrant averring the truth and accuracy of the information contained therein and include all of the following information:
- a. The name, address, and telephone number of the registrant and the delivery service. If the registrant or the delivery service has done business under any other name, including a fictitious name, the registrant must provide each name and all dates and jurisdictions of use.
 - b. The name, address, and telephone number of the person(s) who will manage and operate the delivery service.
 - c. The name, address, and telephone number for the person(s) authorized to accept service of process and legal notices for the delivery service.
 - d. The business name, license number, license type, license designation, license status, and expiration date for any applicable license issued by the Department of Cannabis Control.
 - e. Any other information required by the Chief of Police.

The delivery service must update its registration annually and within 72 hours of any change to the information contained in its registration or its cessation or suspension of medicinal cannabis delivery services within the City's jurisdiction. Registration may be conditioned, suspended, refused, or revoked under the procedure specified in Subsection XI-10-13.15(F)(7). A cannabis delivery service may not re-register, and no registration will be accepted, within one (1) year after its registration is revoked. Where a cannabis delivery service is sold, transferred, merged,

acquired, or any person or entity otherwise succeeds in whole or in part to any of the assets, liabilities, facilities, employees, managers, or officers of a cannabis delivery service, the registration of the successor business may be condition, suspended, refused, or revoked upon the same or similar terms as the previous business as the interests of justice require.

5. **Administrative and Criminal Violations.** In addition to all other remedies and actions allowed by law, any violation of this Subsection may be enforced by administrative citation, pursuant to Title I, Chapter 21 of this Code, or criminal prosecution, pursuant to Section I-1-4.09 of this Code. At the Enforcement Authority's sole discretion, violations of this Subsection may be charged as a misdemeanor, punished by a fine not to exceed the sum of five hundred dollars (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment, or an infraction, punished by a fine not exceeding one hundred dollars (\$100) for a first violation, a fine not exceeding two hundred dollars (\$200) for a second violation within one year, or a fine not exceeding five hundred dollars (\$500) for each additional violation within one year. Each day such a violation continues shall be a new and separate violation.
6. **Rebuttable Presumption.** If a cannabis delivery service reports or otherwise discloses to a state, local, or federal governmental entity that it has delivered cannabis or cannabis products, whether for taxation, licensing, tracking, or other purposes, that report or disclosure shall create a rebuttable presumption for the facts and circumstances of each delivery referenced, including a prima facie case for any violation of this Subsection evidenced thereby.
7. **Suspension or Prohibition.** In addition to all other remedies and actions allowed by law, the Enforcement Authority may immediately suspend, revoke, or otherwise prohibit or condition any delivery service from delivering medicinal cannabis within the City's jurisdictions, or impose additional terms and conditions upon that delivery service, if it fails or has failed to fully comply with all laws, including this Subsection, fails or has failed to register with the Milpitas Police Department prior to delivering, attempting to deliver, or offering to deliver within the City's jurisdiction, fails or has failed to maintain its business license, or fails or has failed to remit any applicable state or local taxes or fees for delivery services occurring within the City's jurisdiction. Pursuant to Title I, Chapter 20, Section 2 of this Code, notice of this suspension, revocation, or imposition of additional terms and conditions may be served by mail to the address provided in the delivery service's registration or, if there is no current registration, any other address listed for the delivery service. Within fifteen (15) calendar days of that mailing, the delivery service may appeal that determination to a hearing officer appointed by the City Manager pursuant to the procedure provide in Title I, Chapter 20, Section 3 of this Code by filing with the City Clerk a written notice of appeal containing all factual and legal grounds for the appeals as well as all records or other evidence supporting that appeal. Within twelve (12) calendar days of being mailed notice of the hearing officer's decision pursuant to the same notice procedure, the delivery service may appeal the hearing officer's decision to the City Council pursuant to the procedure provided in Title I, Chapter 20, Section 5 of this Code.
8. **Transportation Through City.** This section shall not be construed to prohibit use of the public roads to pass through the City's jurisdiction without making a delivery within the City's jurisdiction pursuant to Business and Professions Code, Section 26090 or those activities allowed by Section 26054, subdivisions (c), (d), or (e).
9. **Implementing Regulations.** The City Manager, or his or her designee, with due consultation with the Chief of Police, shall have the authority to adopt all necessary guidelines, procedures, and regulations to implement the requirements and fulfill the policies and purposes of this Subsection related to the delivery of medicinal cannabis.

G. Public Nuisance; Effect of State Law.

1. It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the City to cause or allow such real property to be used for a commercial cannabis use or for the cultivation of cannabis except in strict compliance with this Chapter. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter may be abated as a public nuisance as provided in this Code and/or under State law.
2. In the event of any conflict between the penalties enumerated under this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern. The City Attorney or prosecuting attorney has the authority to declare and prosecute the violation as the maximum penalty permitted by State law, including but not limited to, those penalties prescribed by Health & Safety Code, Section 11362.4. To the extent certain conduct is immune from arrest and criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5) or the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), criminal penalties shall not apply.

SECTION 3. CONSISTENCY AND ENFORCEABILITY OF PRIOR LAW

Repeal or amendment of any provision of the Milpitas Municipal Code herein does not affect any penalty, forfeiture, or liability incurred before this ordinance's effective date or preclude prosecution and imposition of penalties for any violation occurring before this ordinance's effective date. Any such repealed or amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this ordinance.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Council finds and determines that the adoption of this amending ordinance is not a project and is not subject to CEQA review because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change, particularly in that it does not alter the use of land or does a most does not do so inconsistently with uses already authorized, prohibited, or regulated by law. (Cal. Code Regs., tit. 14, § 15378.) Furthermore, even if considered a project, this amending ordinance is categorically exempt from CEQA review in that it comprises of non-land use regulations or at most minor alterations in land use limitations that do not result in any changes in land use or density (Cal. Code Regs., tit. 14, § 15305, 15378(a)(1)) and by common sense can be seen with certainly that there is no possibility that the activity in question may have a significant effect on the environment particularly in consideration of the activities already permitted, prohibited, or regulated by law (Cal. Code Regs., tit. 14, § 15061(b)(3)). This amending ordinance is also exempt because it does not affect development density established by existing zoning and the City's General Plan, for which an Environmental Impact Report was already certified, and does not have any project-specific significant environmental effects peculiar to the project or any site. (Cal. Code Regs., tit. 14, § 15183.)

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.