

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO AMENDING CHAPTER VIII TO ADD SECTION 8-11 TITLED LICENSING OF COMMERCIAL CANNABIS BUSINESSES TO THE NOVATO MUNICIPAL CODE AND FINDING THE AMENDMENTS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO GUIDELINES SECTION 15061(b)(3) AND CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 26055(H)

Section 1. FINDINGS

The City Council of the City of Novato hereby finds and declares as follows:

WHEREAS, pursuant to its police powers and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transportation and testing within its jurisdiction; and

WHEREAS, the City Council has previously adopted ordinances governing cultivation of cannabis for personal use, as well as urgency ordinances to ban commercial cannabis operations until such time as these permanent regulations were developed and adopted; and

WHEREAS, the City wishes to establish a uniform regulatory structure for commercial cannabis operations in the City in accordance with state law; and

WHEREAS, the City of Novato currently regulates only personal cannabis cultivation pursuant to Novato Municipal Code Section 19.34.065; and

WHEREAS, notice of the City Council's public hearing on the Amendments was published in a 1/8th page legal ad in the Marin Independent Journal, a newspaper of local circulation, on October 11, 2019; and

WHEREAS, the City Council held a duly noticed public hearing on October 22, 2019 to introduce and consider the proposed amendments and public comments thereon; and

WHEREAS, it is the intent of the City Council of the City of Novato in enacting this ordinance, to provide for the public health, safety and welfare by enacting regulations which provide for the lawful establishment and operation of commercial cannabis manufacturing, sales, distribution, testing and cultivation activities and ensuring clear distinctions between the lawful and unlawful pursuit of commercial cannabis activities.

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

SECTION II. Section 8-11 is hereby added to the Novato Municipal Code to read as follows:

Section 8-11.05 Title. This section shall be known as the “Licensing of Commercial Cannabis Businesses” ordinance.

Section 8-11.1 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, and provide access to, cannabis for medicinal purposes as recommended by their health care provider(s), and to provide adult use (recreational) access to persons over the age of 21 as authorized by the Control, Tax & Regulate the Adult Use Cannabis Act (“AUMA” or “Proposition 64” passed by California voters in 2016), while imposing sensible regulations on the use of land to protect the City’s residents, neighborhoods and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this Chapter to regulate the cultivation, processing, manufacturing, testing, sale, delivery, distribution and transportation of cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of the City of Novato and to enforce rules and regulations consistent with state law. It is the further purpose and intent of this Chapter to require all commercial cannabis operators to obtain and bi-annually renew a permit to operate within the City of Novato. Nothing in this Chapter is intended to authorize the possession, use or provision of cannabis for purposes that violate state or federal law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the City, and are in addition to any permits, licenses and approval required under State, City or other law.

Section 8-11.2 Legal Authority. Pursuant to Section 7 of Article XI of the California Constitution, the provisions of MAUCRSA, any subsequent state legislation and/or regulations regarding same, the City of Novato is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections from time to time established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Novato to all commercial cannabis activity.

Section 8-11.3 Cannabis Cultivation and Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter. Except as specifically authorized in this Chapter, the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution or transportation (other than as provided under Business & Professions Code Section 26090(e)), of cannabis or cannabis product is expressly prohibited in the City of Novato. In addition to the requirements of this Section, Section 19.12.030 and Section 19.34.066, commercial cannabis uses shall comply with all other applicable provisions of the City of Novato’s General Plan and the Municipal Code. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport cannabis, in amounts that exceed personal use allowances under California law, within the City without a valid license issued pursuant to the

provisions of this Chapter and all requirements of Sections 19.12.030 and 19.34.066. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a license under this Chapter. Unless specific distinctions are made in subsequent sections, requirements shall apply equally to either adult use or medicinal cannabis activities.

This section provides the licensing and operating standards for all commercial cannabis activities, including both adult (recreational) and medicinal cannabis uses, to ensure neighborhood compatibility, minimize potential environmental impacts, mitigate potential nuisances, and provide safe, legal access to cannabis. Additional standards may apply to particular commercial cannabis uses, as established in other sections of this Code or by City Council resolution.

Section 8-11.4 Compliance with State and Local Laws. It is the responsibility of the owners and operators of the commercial cannabis business to ensure that the business is, always, operating in a manner compliant with all applicable state and local laws, including this Section, and any regulations promulgated thereunder, any subsequently enacted state or local law or regulatory, licensing, or certifications requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the commercial cannabis business permit. Nothing in this Section shall be construed as authorizing any activities that violate federal, state or local law with respect to the operation of a commercial cannabis business.

The operator shall comply with all permit, license, approval, inspection, reporting, and operational requirements of other local, state or other agencies having jurisdiction over the type of operation. The operator shall provide copies of other agency and department permits, licenses, or certificates to the review authority to serve as verification of such compliance.

Within seven (7) days of the Owner receiving an initial license or renewal from the State or its divisions, Owner shall deliver evidence of said license or renewal to the City.

Section 8-11.5 Definitions. All definitions pertaining to cannabis regulation that appear in Business and Professions Code Section 26001 are hereby incorporated by reference. Definitions appearing in this Section and Chapter 19 are either those that are not covered by state law, pre-date Proposition 64 and the MAUCRSA, or are outside the scope of Section 26001.

a. “Cannabis Delivery Permit” means a permit issued by the Chief of Police to a business allowing that business to deliver cannabis and cannabis products within the city limits of the City of Novato.

b. “Caregiver” or “primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

c. “Commercial cannabis activity” includes the possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in this chapter.

d. “Commercial cannabis business” means any business or operation which engages in medicinal or adult-use commercial cannabis activity.

e. “Commercial cannabis business permit (“CCBP”)” means a regulatory permit issued by the City of Novato 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 any renewal of a commercial cannabis business permit is made expressly contingent upon the business’ ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the commercial cannabis activity at issue.

f. “Conditional Certificate” (sometimes referred to as “CC”) means a conditional privilege awarded by the City Council to a specific commercial cannabis business which grants that business the privilege of applying for a CCBP.

g. “Dispensing” means any activity involving the retail sale of cannabis or cannabis products from a retailer.

h. “Dispensary” means a business that holds a valid state license and conducts the retail sale of cannabis or cannabis products. “Dispensary” means the same thing as “Retailer.”

i. “Distribution” means the distribution of cannabis and cannabis products between state licensees, including testing laboratories, requiring adherence to state mandated transportation security and cargo manifest requirements.

j. “Distributor” shall have the same meaning as that appearing in Section 26070 of the Business and Professions Code.

k. ”Licensee” or “State licensee” means a person holding a state license.

l. “Limited-access area” means an area in which cannabis is stored or held and is only accessible to some licensee and authorized personnel.

m. “Manufactured cannabis” means (1) a cannabis product that has been (i) produced using infusion or other processes as permitted under a Type N State License or (ii) packaged or re-packaged as permitted under a Type P State License or (2) a cannabis product package that has been labeled or relabeled as permitted under a Type P State License.

n. “Manufacturing site” means a location that (1) produces cannabis products by methods permitted under a Type N State License, (2) packages and/or repackages cannabis products under a Type P State License, (3) labels and/or re-labels cannabis product packages under a Type P State License, and (4) is owned and operated by a person issued a valid commercial cannabis business permit for manufacturing from the City of Novato and a valid State License Type N or Type P, as the case may be.

o. “Non-Store Front Retail Business” means a non-storefront cannabis business that sells and delivers cannabis or cannabis products to customers from a premises that is not open to the public. While the business shall have a physical location within the City of Novato all sales are consummated exclusively by delivery.

p. “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 nonvolatile solvent includes carbon dioxide (CO₂) used for extraction and ethanol used for extraction or post-extraction processing.

q. “Owner” means any of the following:

(1) A person with an aggregate ownership interest of 5 percent or more in the business applying for or holding a CCBP.

(2) The manager of a nonprofit or other entity applying for or holding a CCBP.

(3) A member of the board of directors of a for-profit or nonprofit entity applying for or holding a CCBP.

(4) An individual who will be or is participating in the direction, control, or management of the business applying for and/or holding a CCBP.

r. “Package” means any container or receptacle used or holding cannabis or cannabis products.

s. “Patient” or “qualified patient” shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.22.

t. “Person” means an 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, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

u. “Person with an identification card” shall have the meaning given that term by California Health and Safety Code Section 11362.7.

v. “Proposal” means the materials and information submitted by the Proposer(s) for consideration by the Proposal Review Committee.

w. “Proposal Review Committee” (“PRC”) means staff members of the City of Novato as well as staff of other local permitting agencies, as well as any consultants retained by the City for the purpose of reviewing Conditional Certificate applications.

x. “Proposer” means a person or persons submitting a Conditional Certificate Proposal and a CCBP application to the City of Novato.

y. “Retailer” shall have the same meaning as the definition appearing in Section 26070(a)(1) of the Business and Professions Code.

z. “State license” means a permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA and any subsequent State of California legislation regarding the same to engage in commercial cannabis activity. A state license alone will not authorize the holder to operate a cannabis business in the City, as state law also requires a permit or other authorization issued by a local jurisdiction.

aa. “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 Section 109925 of the California Health and Safety Code.

ab. “Youth center” means any public or private facility that is used only to host recreation or social activities for minors.

Section 8-11.6 Commercial Cannabis Business Permit Required to Engage in Commercial Cannabis Business.

a. No person may engage in any commercial cannabis business or in any commercial cannabis activity within the City of Novato, including manufacture, processing, laboratory testing, transporting, dispensing, distribution, or sale of cannabis or a cannabis product unless the person (1) has a valid CCBP commercial cannabis business permit from the City of Novato; (2) has a valid state license; and (3) is currently in compliance with all applicable state and local laws and regulations pertaining to the commercial cannabis business and the commercial cannabis activities in which the business is engaged.

b. No CCBP shall be issued pursuant to this Section for outdoor or mixed-light commercial cannabis cultivation or storefront retail sales, which are prohibited.

Section 8-11.7 Evidence of Criminal Background Check Required.

a. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), authorizing municipalities to access state and local summary criminal history information for employment, licensing, or certification purposes and authorizes 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, any person who is an, owner, manager, supervisor, employee, or contract employee of a commercial cannabis business must submit fingerprints to the Chief of Police for a background check by the Novato Police Department.

b. A fee for the cost of the background investigation, which shall be the actual cost to the City to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a commercial cannabis business is submitted or at any other time a background investigation is required under this chapter.

c. This provision applies to all employees of the commercial cannabis business, regardless of the date of hire.

d. The criminal background checks completed by the City will, at a minimum, identify the following:

(1) Whether the individual applying for employment has ever been convicted of a violent felony as defined by California Penal Code section 667.5, or equivalent offenses in other states;

(2) Whether the individual applying for employment has ever been convicted of a crime involving dishonesty, fraud, or deceit, including, but not limited to, fraud, forgery, theft, or embezzlement, as those offenses are defined in California Penal Code Sections 186.11, 470, 484 and 504a, respectively; or equivalent offenses in other states;

(3) Whether the individual applying for employment has ever been convicted of the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act. This will not include cannabis-related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.

e. Evidence of a conviction of any of the offenses enumerated in Section 8-11.7(d) shall be grounds for denial of employment or working with or for a commercial cannabis business. Employers who wish to hire or retain an individual notwithstanding this rule shall apply to the Chief of Police, who at his/her sole discretion may issue a written waiver allowing employment or retention of persons convicted of said offenses.

Evidence of a conviction of any of the offenses enumerated in Section 8-11.7(d) shall also disqualify any person from submitting a Proposal for a CC or applying for a CCBP.

f. The CCBPs of commercial cannabis businesses (i) which employ or retain the services of persons who have been convicted of the offenses enumerated in Section 8-11.7(d) without written waiver from the Chief of Police or (ii) the owners of which have been

convicted of the offenses enumerated in Section 8-11.7(d) shall be subject to immediate suspension of the business' CCBP. Owner/operators who wish to contest a suspension of their CCBPs under this section may file an appeal with the City pursuant to Section 8-11.19.

Section 8-11.8 Personnel Prohibited from Holding a License or from Employment with a Cannabis Business Permittee; Past Civil Violations. In addition to the grounds for disqualification related to the results of the criminal background check described in Section 8-11.7, evidence of past civil violations shall be grounds for disqualification as follows:

a. Any applicant, including but not limited to, any 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 or any person owning, being a member or shareholder of, or any person having an interest in any of said entities or capacities shall be prohibited from holding a CCBP if any of the following is true:

(1) The applicant has had a commercial cannabis license or permit suspended or revoked by any city, county, city and county or any other state cannabis licensing authority;

(2) The applicant was notified that it/he/she was conducting commercial cannabis activity in violation of Chapters 8 and 19 and/or other City of Novato ordinances, codes or requirements, and failed to cure the violation in a timely manner;

(3) The applicant has entered into either a verbal or written agreement to lease, sublease, or any other agreement to use real property for commercial cannabis activity and engaged in that activity without having been issued a valid permit in a violation of this Code.

Section 8-11.9 Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

a. Except as otherwise provided by ordinance, the following types and number of cannabis businesses are permitted in the City:

(1) Non-Store Front Retailer – unlimited.

(2) Testing Laboratory – maximum of two (2).

(3) Manufacturing – maximum of two (2).

(4) Indoor Cultivation – maximum of two (2).

(5) Microbusiness – maximum of three (3)

(6) Distribution – maximum of one (1) if permitted as a standalone business operation holding a State license Type 11 only. No limit if permitted as an ancillary activity to one of the above listed businesses (1 through 5), where permitted by state law.

Sections 19.12.030 and 19.34.066 contain additional limitations on permissible operations.

b. Section 8-11.9(a) is intended only to create a maximum number of commercial cannabis businesses that may be issued CCBPs to operate under each category. Nothing in this chapter creates a mandate that the City Council must issue any or all of the CCs for the

businesses identified above if (i) it is determined that the Proposers do not meet the standards which are established in the Proposal requirements or further amendments to the Proposal process, or, (ii) the City Council, upon further deliberation determines that the issuance of any or all CCBPs will adversely impact the public safety, health or welfare of the City and/or its residents.

c. Each year following the City Council’s initial award of CCs, if any, or at any time in the City Council’s discretion, the City Council may reassess the number and type of CCs and/or CCBPs which are authorized for issuance. The City Council, at its discretion, may determine that the (i) number of CCs and/or CCBPs should stay the same or be increased, and/or (ii) the category of permitted commercial cannabis businesses should be changed.

d. Any commercial cannabis business which is granted a CCBP hereunder shall also be permitted to engage in distribution transport activities, provided that it first obtains the State distribution license necessary to engage in such activities.

e. Any commercial cannabis business which is granted a retailer’s CCBP here under shall also be permitted to engage in delivery services.

Section 8-11.10 Consideration of Finalists for Award of Conditional Certificate.

a. The City Council shall hold a duly noticed public hearing to consider the awarding of Conditional Certificates (CCs) to one or more Finalists. The award of CC’s shall be left to the sole discretion of the City Council. The City Council’s award of each CC shall be memorialized in written decisions supporting each award and identifying any additional conditions and/or agreements required by the City Council. The Council may award CCs for each category of commercial cannabis business identified in Section 8-11.9 in an amount no greater than the number assigned in said Section. The City Council reserves the right to reject any or all Proposals and reserves the right to request and obtain additional information any Proposer, should the City Council find such actions necessary in order for the Council to make an informed decision or otherwise act in the best interests of the health, safety and/or welfare of the City.

b. At any time prior to a CCBP being issued to any Proposer, the City Council may modify, postpone, or cancel; (i) any requirement applicable to any Proposal, or (ii) the entire program established under this chapter without any liability, obligation, or commitment to any Proposer, party, firm or organization. All Proposers assume the risk that all or any part of the program established under this chapter, or any particular category of permit potentially authorized under this chapter, may be cancelled or eliminated, as the case may be, at any time prior to the Proposer in question being issued a CCBP.

Section 8-11.11 Commercial Cannabis Businesses Awarded Conditional Certificates May Apply for Land Use Permits and Building Permits.

a. Upon being granted a Conditional Certificate, Proposer(s) (hereinafter sometimes referred to as “Applicants”) shall be eligible to apply for and take the necessary steps to obtain all land use approvals and building permits necessary to construct, install and/or operate their specific

commercial cannabis business at the location identified in their Proposal. This includes any required environmental review pursuant to the California Environmental Quality Act (CEQA).

b. From the date the City Council awards a Conditional Certificate to an Applicant, the Applicant shall have up to two years to:

(1) Apply for and obtain the necessary land use permits. At a minimum, the Applicant shall be required to apply for and obtain a Zoning Clearance or land use entitlement as specified in Section 19.12.030 and 19.34.066 of this Code. The granting of any such Zoning Clearance or land use entitlement to the Applicant shall not confer any vested rights and shall not run with the land. The term of any such Zoning Clearance or other entitlement granted to the Applicant related to the Proposal shall be expressly limited to two years from the date of the Clearance or entitlement's final approval; and

(2) Apply for and receive building permit(s) and complete all necessary renovations and/or new construction and secure approval of a final inspection and/or certificate of occupancy; and

(3) Satisfy all of the conditions of approval required and/or included in the Conditional Certificate awarded to the Applicant and provide proof that all requirements of the CCBP have been met. This includes the Applicant's execution and/or performance of all required legal contracts necessary to secure the proposed public benefit included in the Proposal; and

(4) Apply for and be issued a CCBP; and

(5) Initiate activities authorized under the CCBP.

c. Extensions of this time period beyond two years shall be granted on a case-by-case basis by the City Manager. Under no circumstances may this time period be extended for more than 180 days.

Section 8-11.12 Commercial Cannabis Businesses Permit (CCBP) Required.

a. Prior to commencing operations of a commercial cannabis business or conducting any commercial cannabis activity, the Applicant must obtain a Commercial Cannabis Business Permit (CCBP) from the City Manager.

b. To receive this ministerial permit, the Applicant must provide proof of all of the following:

(1) A valid Conditional Certificate awarded by the City Council and a State License for the type of commercial cannabis business(es) the Conditional Certificate stipulates.

(2) All necessary planning approvals, including but not limited to, a Zoning Clearance or land use entitlement(s).

(3) All necessary building permits and approvals by agencies with jurisdiction, including but not limited to Novato Fire District, Novato Sanitation District, North Marin Water District, and Marin County Health, and any other agency approvals that may be required.

(4) A City business license issued to the Applicant for the relevant commercial cannabis business.

(5) Satisfaction of any/or compliance with, all applicable provisions of this chapter, including, Sections 8-11.11, 8-11.13 through 8-11.16 and 8-11.27.

c. Upon receipt of a complete application for a CCBP, the City Manager shall ascertain whether the Applicant has satisfied all of the conditions precedent to issuance of the CCBP specified in this chapter. Except in unusual circumstances, the City Manager shall complete the inspection and investigation within 60 days of receiving the Applicant's complete application.

d. The City Manager's inspection and investigation shall include a review of the relevant documents and the proposed business location to ensure that the commercial cannabis business and its Applicant have satisfied all of the applicable criteria set forth in this Section and this Code.

e. If the City Manager cannot approve the CCBP, the City Manager will provide written notice of the reasons therefor ("CM's Report") to the Applicant within 15 working days of the determination. The City Manager's decision is appealable pursuant to sections 8-11.20 and 8-11.21.

f. Issuance of a CCBP does not create a land use entitlement. No property interest, vested right or entitlement to receive future permits to operate a commercial cannabis business shall ever inure to the benefit of the holder of a CCBP as such permits are limited in duration, revocable and upon renewal must comply with all applicable laws then in effect. The CCBP shall expire on the earlier of: (1) the end of the term of the cognate Zoning Clearance or other land use entitlement; or, (2) twenty-four (24) months from the date of the CCBP's issuance, unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a CCBP, (i) unless all of the state and local laws and regulations, including but not limited to the requirements of this chapter and of the CCBP, have been complied with, and (ii) until a state license is available and obtained by the permitted operator as set forth in Section 8-11.6.

Section 8-11.13 City Business License. Prior to commencing operations and prior to issuance of a CCBP, a commercial cannabis business shall obtain a City business license.

Section 8-11.14 Building Permits and Inspections. Prior to commencing operations and prior to issuance of a CCBP, a commercial cannabis business shall be subject to a mandatory building and fire 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 building permits, county health permits and other zoning or land use or utility permits or approvals.

Section 8-11.15 Certification from the Community Development Director. Prior to commencing operations and prior to issuance of a CCBP, a commercial cannabis business must obtain a certification from the Community Development Director or designee, certifying that the business has secured all necessary land use permits and is located on a site that meets the requirements of Sections 19.12.030 and 19.34.066.

Section 8-11.16 Right to Occupy and to Use Property. As a condition precedent to the City's issuance of a CCBP pursuant to this chapter, any person intending to open and operate a commercial cannabis business shall provide sufficient evidence of its/his/her legal right to occupy and to use the proposed location. In the event the proposed location will be leased from a property

owner, the Proposer shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this chapter and consents to the operation of the commercial cannabis business on the owner's property. The property shall be identified sufficiently to verify the premises is consistent with the premises identified in the Proposal and with state license applications.

Section 8-11.17 Revocation of Permits. CCBPs may be revoked for violation of any (i) law and/or rule, regulation and/or standard adopted pursuant to state law and/or local law, including, but not limited to, this chapter, (ii) condition or term made part of the awarding of the CC or the issuance of the CCBP, (iii) condition or term made part of the Zoning Clearance or other permit or entitlement granted to the Proposer, and/or (iv) term or condition of any agreement entered into between the Proposer and the City.

Section 8-11.18 Effect of State License Suspension, Revocation or Termination.

a. Suspension of a license issued to a commercial cannabis business by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of that commercial cannabis business to operate with the City, until the State, or its respective department or division, reinstates or reissues the State license. Should the State, or any of its departments or divisions, revoke or terminate the license of a commercial cannabis business, such revocation or termination shall also immediately revoke or terminate that business' CCBP and CC and the ability of that commercial cannabis business to operate within the City. At the City Manager's discretion, the cannabis business owner may re-apply for a CC and later a CCBP at such time as it can demonstrate that the grounds for revocation by the State no longer exist, or that the underlying deficiency has otherwise been cured. Any such re-application will be subject to all the provisions and payment of fees applicable to Proposals for CCs and CCBPs.

b. Suspension of a CCBP issued to a commercial cannabis business by the City of Novato shall immediately suspend the ability of that commercial cannabis business to operate within the City, until such time as the City reinstates or reissues the license. Should the City, or any of its departments or divisions, revoke or terminate the license of a commercial cannabis business for violations of this ordinance or any related regulations established by resolution, such revocation or termination shall immediately revoke or terminate business' ability to operate within the City of Novato. At the City Manager's discretion, the cannabis business Owner may re-apply for a CC and later a CCBP at such time as it can demonstrate that the grounds for suspension, termination or revocation of the license no longer exist, or that the underlying deficiency has otherwise been cured. Any such re-application will be subject to all the provisions and payment of fees applicable to Proposals for CC's and CCBP's. The City Manager's decision regarding whether the Owner may re-apply is appealable to the City Council.

Section 8-11.19 Appeals. Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this chapter from a decision of the City Manager or designee(s), the appeal shall be conducted as prescribed in this chapter, specifically, pursuant to sections 8-11.20 and 8-11.21.

Section 8-11.20 Written Request for Appeal.

a. Within ten (10) calendar days after the date of a decision of the City Manager or designee to revoke, suspend or deny a permit, or to add conditions to a permit, the aggrieved party 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 appeal, the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

Section 8-11.21 Appeal Hearing Process.

a. Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo and shall conduct the hearing pursuant to the procedures set by the City.

b. The appeal shall be held within a reasonable time after date of filing, but in no event later than forty-five (45) working days from the date of filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.

c. At the hearing, the appellant may present any information s/he/it deems relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.

d. The decision of the Council shall be final and shall be memorialized in a written decision.

Section 8-11.22 Change in location; updated registration form.

a. Any time an owner wishes to change the location of any cannabis activities specified in the CCBP, the owner must apply for and obtain a CC, and thereafter, a CCBP pertinent to the new location. The process and the fees applicable to this procedure shall be the same as the process and fees set forth in Sections 8-11.10 and 8-11.16.

b. Within fifteen (15) calendar days of any other change in the information provided in the Proposal or any change in status of compliance with the provisions of this chapter, including any change in the commercial cannabis business ownership or management members, the Owner shall file an updated information form with the City Manager or designee(s) for review along with a registration amendment fee. In addition, to the extent any other provisions of this chapter pertain to such changes, the Owner shall be required to comply with those provisions.

Section 8-11.23 Transfer of Commercial Cannabis Business Permit.

a. The Owner of a CCBP shall not transfer ownership or control of the CCBP to another person or entity unless and until the transferee obtains an amendment to the CCBP from the City Manager or his/her designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Manager or his/her designee in accordance with all provisions of this chapter (as though the transferee were applying for an original CC and CCBP). 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 Proposal fee).

b. The City Manager or his/her designee shall conduct a hearing to determine whether the transferee passed the background check required for permittees and meets all other requirements of this chapter.

c. The CCBP issued through the grant of a transfer by the City Manager or his/her designee shall be valid for a period of two years beginning on the day the City Manager or his/her designee approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this chapter in the event the transferee desires to have its CCBP renewed.

d. Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the City Manager or his/her designee through the transfer process set forth in this section. Failure to comply with this provision is grounds for permit revocation.

e. A permittee may change the form of business entity without applying to the City Manager or his/her designee for a transfer of permit, provided that either:

(1) The membership of the new business entity is substantially similar to original permit holder business entity (at least 51% of the membership is identical), or

(2) The original permittee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and in compliance with Section 8-11.12, the individual(s) listed on the City Proposal application of the original permittee entity is the same as Board of Directors of the new business entity.

Although obtaining permission to transfer is not required in these two circumstances, the permit holder is required to notify the City Manager in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for permit revocation.

f. No CCBP may be transferred when the City Manager or his/her designee has notified the permittee that the permit has been or may be suspended or revoked.

g. Any attempt to transfer a CCBP either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

h. Decisions of the City Manager pertaining to proposed transfers of the CCBP shall be appealable to the City Council as provided for in Sections 8-11.19 through 8-11.21.

Section 8-11.24 Location and Design of Commercial Cannabis Businesses.

a. The commercial cannabis businesses permitted to operate in the City as set forth in Section 8-11.9(a) must be located in appropriately designated zoning areas as detailed in Sections 19.12.030 and 19.14.030 of this Code, as well as the locational criteria set forth in Section 19.34.066.

b. Each proposed commercial cannabis business project shall:

(1) Conform with the City's general plan, any applicable specific plans, master plans, and design requirements.

- (2) Comply with all applicable zoning and related development standards.
- (3) Be constructed in a manner that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.
- (4) Be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required for the operation or development.
- (5) Be served by highways or streets adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate. Be provided with adequate electricity, sewerage, disposal, water, fire protection and storm drainage facilities for the intended purposes.

Section 8-11.25 Limitations on City's Liability. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a CCBP pursuant to this chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any CCBP, the Proposer/Applicant shall be required to meet all of the following conditions before they can receive the commercial cannabis business 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 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 CCBP, 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, the operation of the commercial cannabis business or activity, or the alleged violation of any federal, state or local laws by the commercial cannabis business or any of its officers, employees or agents. The indemnity obligation arising under this paragraph does not include any claims arising out of gross negligence or willful misconduct by the City, its officers, officials, employees, representatives 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 costs 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 CCBP, or related to the City's approval of a commercial cannabis activity. The City may, at its sole discretion, 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.

Section 8-11.26 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 of its assets and liabilities. On no less than an annual basis or at any time upon reasonable request of the City, each commercial cannabis business shall file a sworn statement detailing the number 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 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 financial audit as determined by the City Manager or his/her designee(s).

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 of all 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 his/her designee(s) upon 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 production or manufacturing, laboratory testing and distribution processes until purchase as set forth MAUCRSA.

d. Each commercial cannabis business shall allow City officials access to the business's books, records and accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination for purposes of determining compliance with this chapter, applicable law and the CCBP. Books, records, accounts, and any and all relevant data or documents will be produced or made available at a location specified by the City no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City's software and hardware.

Section 8-11.27 Security Measures. A permitted commercial cannabis business 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. All commercial cannabis businesses shall comply with additional requirements detailed in the regulations.

Section 8-11.28 Restriction on Alcohol & Tobacco Sales.

a. No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the commercial cannabis business.

b. No person shall cause or permit the sale of tobacco products on or about the premises of the commercial cannabis business.

c. No person shall consume cannabis, cannabis products, tobacco or alcohol on the premises of any commercial cannabis business. For purposes of this section, "premises" means the designated structure or structures and land specified in the Proposal or application that is owned, leased, or otherwise held under the control of the Proposer, applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

Section 8-11.29 Fees and Charges.

a. No person may commence or continue any commercial cannabis activity in the City without timely paying in full all fees and charges required for the operation of a commercial

cannabis activity. Fees and charges associated with the operation of a commercial cannabis activity shall be established by resolution of the City Council which 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, 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' books and records pursuant to section 8-11.26 for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

c. Prior to operating in the City and as a condition of issuance of a CC or CCBP, the Owner or operator of each cannabis facility shall enter into an operational or community benefit agreement with the City setting forth the terms and conditions under which the cannabis facility will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

Section 8-11.30 Operating Requirements for Out of City Delivery Services. Prior to commencing operations, a cannabis out-of-city delivery service shall comply with the following requirements:

a. Obtain a permit from the City acknowledging/authorizing the delivery of cannabis and cannabis products within the city limits. A copy of this permit shall be retained by all drivers.

b. The retail business operating the delivery service 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.

c. The retail business operating the delivery service shall furnish to the City Manager the year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for any and all vehicles that will be used to deliver cannabis and cannabis products.

d. The retail business operating the delivery service shall apply for and obtain a city business license, and in that connection, shall pay all applicable sales and license taxes unless otherwise exempt from doing so.

Section 8-11.31 Cannabis Deliveries. Deliveries within the City limits shall only be permitted by persons that have a Cannabis Delivery Permit issued by the Chief of Police, in consultation with the City Manager or his/her designee. Any other cannabis delivery is prohibited. This Permit can be issued either to a business located outside the City or can be included as part a CCBP issued to a cannabis retail or dispensary operation (collectively, these businesses shall be sometimes referred to herein as "Cannabis Delivery Businesses").

a. Application. All of the information and stipulations listed below shall be supplied by the operator of a cannabis business providing delivery services to the Chief of Police. No commercial cannabis business may deliver cannabis or cannabis products to any person situated within the City's limits until and unless the Chief of Police, in consultation with the City Manager or his/her designee, issues a Cannabis Delivery Permit to that business. If the Permit is denied, the

Applicant may appeal the decision of the Chief of Police to the City Council, pursuant to Section 8-11.19 Appeals.

b. Fees. An Administrative Review Fee Deposit as adopted in the City's fee schedule shall be submitted to the City along with the Cannabis Delivery Permit to be used to cover the cost of all needed staff time, consultant costs and other resources utilized in vetting the Cannabis Delivery Permit.

c. Cannabis Delivery Permits shall be subject to the following standards:

(1) Each Cannabis Delivery business owner, as well as each employee shall submit specific personal information including names, birth dates, addresses, social security numbers, relevant criminal history, relevant work history, names of businesses owned or operated by the applicant within the last ten (10) years, investor or partner information, and electronic fingerprint images and related information as required by the Chief of Police, in consultation with the City Manager and his/her designee for the purpose of obtaining information as to the existence and content of a record of State or Federal convictions and arrests. A mandatory criminal background check will be conducted. All confidential information shall be held in a confidential file, exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

(2) Cannabis Delivery Businesses shall provide to the Chief of Police a list of all vehicles to be used for delivery of cannabis and cannabis products, including each vehicle's make, model, year, license plate number and vehicle identification number. The cannabis delivery business shall update the list prior to any vehicle being added to or removed from service and provide that updated list to the Chief of Police on the same day the vehicle change is made.

(3) Cannabis Delivery Businesses shall adhere to best practices in terms of handling currency as established by the Chief of Police, in consultation with the City Manager or his/her designee.

(4) Cannabis Delivery Businesses shall ensure that all delivery vehicles shall be in possession of a copy of all licenses and permits required by the State of California and the City.

(5) All vehicles used by Cannabis Delivery Businesses to deliver cannabis and/or cannabis products shall not be marked or otherwise identified with advertisements, the name of the cannabis delivery business, or any other distinctive markings associated with cannabis.

(6) Cannabis Delivery Businesses shall only deliver cannabis directly to the residence or business address of the designated recipient; deliveries to any other location are prohibited.

(7) Cannabis Delivery Businesses shall deliver cannabis or cannabis products only between the hours of 8:00 a.m. and 10:00 p.m.

(8) Cannabis Delivery Businesses shall only deliver cannabis or cannabis products to persons 21 years of age or older, or a person 18 years of age or older who possesses a physician's recommendation for medicinal use only.

Section 8-11.32 Permissible Delivery Locations and Customers. Cannabis delivery businesses located inside or outside of the City which are permitted to engage in delivery of cannabis and cannabis products inside the City of Novato are subject to the following, additional requirements:

a. A licensed cannabis delivery business shall not deliver cannabis or cannabis products to an address located on publicly owned land or any address on land or in a building leased by a public agency.

b. A licensed cannabis delivery business shall comply with all requirements of state and local law pertaining to the business' operations and all subsequent policies, procedures and regulations which may be promulgated by the City Manager from time to time.

Section 8-11.33 Fees Deemed Debt to the City of Novato. The amount of any fee, cost or charge imposed pursuant to this chapter shall be deemed a debt to the City of Novato that is recoverable via an authorized administrative process as set forth in this code, or in any court of competent jurisdiction.

Section 8-11.34 Permit Holder Responsible for Violations. The person to whom a CCBP is issued pursuant to this chapter shall be responsible for all violations of the laws and regulations of the State of California or of the regulations and/or the ordinances of the City of Novato, whether committed by the Owner, permittee or any employee or agent of the permittee, which violations occur in or about the premises of the commercial cannabis business and whether or not said violations occur within the permit holder's presence.

Section 8-11.35 Inspection and Enforcement.

a. The City Manager, or his/her designee(s) charged with enforcing the provisions of the City's 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 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 his/her designee(s) charged with enforcing the provisions of this chapter may enter the commercial cannabis business at any time during the hours of operation, with or without notice for purposes of inspection of the premises and business records.

Section 8-11.36 Promulgation of Regulations, Standards and Other Legal Duties.

a. In addition to any regulations adopted by the City Council, the City Manager or his/her designee is authorized to establish and develop any additional rules, regulations, forms and standards governing the issuance, denial or renewal of CCBP, 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 will be published on the City's website.

c. Regulations promulgated by the City Manager shall become effective upon date of publication after first being approved by the City Council. 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 or his/her designee.

Section 8-11.37 Compliance with State Regulations. It is the stated intent of this chapter to regulate commercial cannabis activity in the City in compliance with all provisions of MAUCRSA and any subsequent state legislation.

Section 8-11.38 Violations declared a public nuisance. Each and every violation of the provisions of this chapter, and of any regulations established by resolution and promulgated pursuant to this chapter, is hereby deemed unlawful and a public nuisance.

Section 8-11.39 Each violation a separate offense. Each and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures available to and authorized by the City of Novato. Additionally, as a nuisance per se, any violation of this chapter shall be subject to injunctive relief, and any permit issued in violation of this chapter shall be deemed null and void. The City of Novato may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial cannabis business or persons related to, or associated with, the commercial cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the City Manager, or his/her designee(s), may take immediate action to temporarily suspend a CCBP issued by the City, pending a hearing before the City Manager, or his/her designee(s).

Section 8-11.40 Criminal penalties. Each and every violation of the provisions of this chapter may in the discretion of the District Attorney or City Attorney be prosecuted as an infraction or a misdemeanor and, in the case of an infraction, upon conviction be subject to a fine not to exceed the amounts specified in California Government Code Section 36900(b) and, in the case of a misdemeanor, upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 8-11.41 Remedies cumulative and not exclusive. The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

SECTION III. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

SECTION IV. CEQA

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. Specifically and additionally, as part of the review of any Proposal to establish and operate a cannabis business in the City, the City has the authority to determine the appropriate level of environmental review and should same be necessary, require the Proposer to conduct that review as a condition to the awarding of any entitlement or permit under this Ordinance. This ordinance is also exempt under Business and Professions Code Section 26055 (H) which, until July 1, 2021, exempts the adoption of ordinances, rules or regulations on commercial cannabis which require subsequent discretionary review. The City Council concurs in these findings and adopts them as its own. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Marin in accordance with CEQA Guidelines.

SECTION V: Publication and Effective Date

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption,

or

publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

This ordinance shall become effective 30 days after the date of its passage and adoption.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was first read at a regular meeting of the Novato City Council on the 22th day of October, 2019, and was passed and adopted at a regular meeting of the Novato City Council on the 12th day of November, 2019, by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

Mayor of the City of Novato

Attest:

City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato