City of Nevada City

TO: Planning Commission

FROM: Amy Wolfson, City Planner

HEARING DATE: November 17, 2016

RE: **Cannabis Dispensary Ordinance Public Outreach Recommendation**

ACTIONS REQUESTED
Review and authorize a public outreach strategy for obtaining feedback on a potential cannabis dispensary ordinance

BACKGROUND / DISCUSSION: At the August 25, 2016 City Council Strategic Planning Workshop, staff was directed to research the possibility of allowing a medical cannabis dispensary. On September 28, Council was presented with a draft ordinance that outlines a process for allowing one such dispensary within City Limits. At that meeting, Council referred review of the draft ordinance to the Planning Commission for their recommendation. There are two key components to the proposed ordinance that require evaluation: 1) the parameters needed to regulate the operation of a dispensary business (i.e. required permits, location limitations, employee background, etc.), and 2) the method in which the City Council uses to select a dispensary operator.

Under current state law (the Medical Cannabis Regulation and Safety Act), the City is permitted to allow medical cannabis businesses including cultivators, manufacturers, distributors, transporters, testing facilities, and dispensaries to operate within the City. Currently, the City prohibits all types of medical cannabis businesses within the City, and explicitly bans medical marijuana dispensaries in Chapter 9.22 of the Nevada City Municipal Code. A copy of the current Chapter 9.22 is attached hereto as Exhibit "A" for your reference.

DISPENSARY ORDINANCE SUMMARY: The draft Ordinance would amend Chapter 9.22 of the Nevada City Municipal Code to repeal the ban on medical marijuana dispensaries and would replace the language with a permitting procedure for medical cannabis businesses, whereby interested parties will submit an application, submit to a criminal background check, and provide other information necessary to determine eligibility.

As drafted, the Ordinance would permit a single medical cannabis dispensary to locate within the City, but allow the City Council to authorize more than one, immediately or after a specified trial period if preferred. Any successful permittee must also comply with the operational and other requirements contained in the draft ordinance. As currently drafted, the requirements include:

- Payment of a permit fee, and all required City business license fees, development fees, and applicable taxes;
- Record keeping requirements;
- Verification of customer status as 18 and older, and with a valid medical recommendation or valid primary caregiver status.

- Security requirements such as retention of licensed security guards, security cameras, alarm system, panic buttons, and cannabis products must be securely stored to prevent loss or theft.
- No alcohol can be sold on-site.
- Operating hours are limited to 8 a.m. to 8 p.m. daily.
- Cannabis or cannabis-containing products may not be consumed on the premises.
- Minors are prohibited from being on the premises in any capacity.
- Odor controls devices and techniques must ensure that there are no odors released from the building that can be detectable off-sit.
- Owner(s)/employees of the business must also obtain a permit after undergoing a background check and meeting requirements set forth in the ordinance.

In addition to the amendments to Chapter 9.22, the draft Ordinance will also amend the Zoning Code to add Chapter 17.142 to the Municipal Code to designate Light Industrial areas as the appropriate zone for medical marijuana dispensaries to locate. Chapter 17.142 would require that dispensaries be located at least 600 feet from schools as required by State law. The City may be more restrictive in its distance requirements, but is not permitted to be less restrictive than the State law.

PUBLIC OUTREACH: The September City Council meeting was well-attended and included public comment which was interspersed with impassioned testimony from several members of the public. Staff anticipates that this process will spark significant public interest. Staff is therefore recommending the Planning Commission take the following minimum steps toward obtaining public feedback: 1) open a public comment period from November 18 through December 6, 2016, and 2) hold at least one informational meeting structured as an evening Special Planning Commission Meeting prior to the end of the comment period. In order to allow adequate time for public review of the current draft ordinance, and with consideration of the Thanksgiving holiday, staff recommends that the special meeting be held the evening of Tuesday, November 29 or Thursday, December 1. Staff is seeking direction on the workshop scheduling, as well as any other recommended method for public outreach

RECOMMENDATION: Staff is primarily seeking direction on how to approach public outreach, and recommends opening up a public comment period and a minimum of one evening informational meeting to be held as a Special Planning Commission meeting.

ATTACHMENTS:

1. Draft Cannabis Dispensary Ordinance

ORDINANCE NO.__ _____

AN ORDINANCE AMENDING CHAPTER 9.22 OF TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED "PROHIBITING MEDICAL MARIJUANA DISPENSARIES," AND RENAMING IT "MEDICAL MARIJUANA DISPENSARIES AND OTHER MARIJUANA BUSINESSES AND ACTIVITY" AND ADDING CHAPTER 17.142 ENTITLED "MEDICAL MARIJUANA USES AND ACTIVITY" TO THE NEVADA CITY MUNICIPAL CODE AND AMENDING CHAPTER 17.48 ENTITLED "LIGHT INDUSTRIAL ZONE"

WHEREAS, the City of Nevada City is a general law city organized pursuant to Article XI of the California Constitution; and

WHEREAS, pursuant to the authority granted the City by Article XI, Sections 5 and 7 of the California Constitution, the City has the power to make and enforce within its limits all ordinances and regulations in respect to municipal affairs not in conflict with general laws; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police powers; and

WHEREAS, on November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (CUA), codified at California Health and Safety Code section 11362.5, the intent of which was to enable persons with a demonstrated need for marijuana for medical/therapeutic purposes, as recommended by a health care provider, to obtain and to use marijuana, or marijuana-derived compounds, under limited and specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 codified as California Health and Safety Code section 11362.7 et seq. and entitled the "Medical Marijuana Program Act" (MMPA) became law to clarify the scope of the CUA. Pursuant to California Health and Safety Code section 11362.77(a), a qualified patient or primary caregiver was permitted to possess no more than eight (8) ounces of dried marijuana plant material per patient. In addition, they were also able to maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorized an additional amount; and

WHEREAS, the CUA is limited in scope in that it only provides a defense from criminal prosecution for possession and cultivation of medical marijuana to qualified patients and their primary caregivers. The MMPA also is limited in scope in that it establishes a statewide identification program and affords qualified patients, persons with recommendation cards, and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana; and

WHEREAS, on October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA) which consisted of three interrelated

pieces of legislation (SB 643, AB 243, and AB 266), intended to provide a comprehensive regulatory framework for the licensing, control, and taxation of medical marijuana related businesses in California; and

WHEREAS, effective June 27, 2016, SB 837 changed the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act ("MCRSA").

WHEREAS, the MCRSA expressly protects a City's local licensing practices, zoning authority, and other local actions taken under the City's constitutional municipal and police powers; and

WHEREAS, the MCRSA contains statutory provisions that:

(1) Allow local governments to enact ordinances expressing their intent to allow or prohibit the cultivation of marijuana and their intent to administer or not administer a conditional permit program pursuant to California Health and Safety Code section 11362.777 for the cultivation of marijuana;

(2) Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances or enforcement of local permit or licensing requirements regarding marijuana per California Business and Professions Code section 19315(a);

(3) Expressly provide that the Act does not limit the civil or administrative authority or remedies of a local government provision of law regarding marijuana including, but not limited to, a local government's right to make and to enforce within its limits all regulations not in conflict with general laws per California Business and Professions Code section 19316(c);

(4) Specifically requires, as a condition of state licensure, compliance with any and all local requirements for all cannabis-related operations;

WHEREAS, the California Supreme Court has made clear that neither the CUA nor the MMPA expressly or impliedly preempts the authority of cities or counties, under their traditional land use and police powers, to allow, restrict, limit or entirely exclude facilities that distribute medical marijuana. The MMPA allowed cities and counties to adopt local ordinances that regulate the location, operation or establishment of medical marijuana collectives and to enforce such ordinances. (City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729; Health and Safety Code section 11362.83). The same authority encompasses the regulation, operation, or establishment of marijuana cultivation. (Maral v. City of Live Oak (2013) 221 Cal.App.4th 975.) That authority remains undisturbed under MCRSA; and

WHEREAS, marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 USC 801 et seq., which makes it unlawful for any person to cultivate,

manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no statutory exemption for the cultivation of marijuana for medical purposes. Federal law lists marijuana as a Schedule I drug, meaning that it has a high potential for abuse, it has no currently accepted medical use in treatment, and there is a lack of accepted safety for use under medical supervision; and

WHEREAS, despite this classification and treatment under federal law, federal executive and law enforcement agencies have issued memoranda and other guidelines allowing for the development of state-specific regulatory schemes that include the provision of marijuana and marijuana-derived products for medical purposes, as long as the administration of those schemes is consistent with the aims of federal law; and

WHEREAS, the City has received inquiries from individuals and incorporated entities inquiring about the ability to open medical marijuana related businesses within the City, including dispensaries, cultivation locations, and manufacturing/processing businesses. Other than a general prohibition of dispensaries and cultivation, the City has not yet adopted land use controls or regulations or other requirements for the operation of these businesses once established; and

WHEREAS, without sufficient regulations and standards in effect and which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare of current and future residents of the City, from the establishment of medical marijuana related businesses in the City in a manner which is likely to lead to confusion, public harm, and possible violation of federal executive guidelines; and

WHEREAS, the California Attorney General's 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be impacted negatively by nuisance activity such as loitering, or more significant levels of crime; and

WHEREAS, Nevada City Municipal Code Section 17.04.040 provides that no land may be used for any purpose other than as permitted and in conformance with the City's zoning laws and other ordinances; and

WHEREAS, the City Council recognizes that the investigation and research of the therapeutic uses for medical marijuana and natural marijuana-derived compounds continues to progress, with at least some demonstrated positive impact on users following the advisement and encouragement of their health care providers, for a variety of ailments, including severely debilitating and terminal illnesses; and

WHEREAS, the City Council recognizes, upon consultation with law enforcement, that supply chains for medical marijuana and marijuana-related products as they currently exist, in the absence of state and local regulatory schemes, can and do benefit criminal

elements to the detriment of residents of the State of California, the County of Nevada, and very likely the City of Nevada City, without full regard for public safety, health, and welfare issues; and

WHEREAS, the City Council recognizes the individual freedom and privacy interests that surround the choice of what to take into one's body, following consultation with one's chosen health care provider(s), and for one's own health-related purposes, and in a manner that is responsible in its impacts on others in the community, including children; and

WHEREAS, the City Council also recognizes its obligation to provide guidance on appropriate community standards of health, safety, and welfare, and, where appropriate, to protect residents—especially residents of particularly vulnerable populations like children—from violation and abuse of those community standards; and

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of medical marijuana related businesses which are intended to operate in conjunction with the zoning and land use regulations of the City of Nevada City, and which are intended to address the negative impacts, nuisance impacts, and criminal impacts of unregulated cannabis-related businesses; and

WHEREAS, medical marijuana related businesses will be subject to the zoning and land use regulations of the zoning district in which such business establish and operate, as set forth in Chapter 17 of the Nevada City Municipal Code (the Nevada City Zoning Code), and as otherwise established by the City; and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Nevada City General Plan; and

WHEREAS, the City Council finds that the adoption of this ordinance is not a "project" under California Environmental Quality Act (CEQA), because the ordinance will allow for the establishment of a limited number of medical marijuana dispensaries to operate in a similar manner as traditional pharmacies and/or plant nurseries will not cause a director physical change in the environment nor a reasonably foreseeable indirect physical change in the environment (Public Resources Code section 21065).

WHEREAS, the City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the following sections of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

A. The ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance permits only one medical marijuana dispensary which business will have impacts similar to traditional pharmacies which are already

authorized within the City. Furthermore, the ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving medical marijuana. For example, the ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area into blight. Further, there is no possibility that this ordinance would create cumulative impacts that are significant because this ordinance only allows one medical marijuana dispensary, does not authorize construction or other related activities or any other activities that are not already permitted, except that the ordinance allows the same activities but with a different material (medical marijuana) that is being sold for medical use; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

B. The ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the type of business permitted by the ordinance is consistent with those contemplated by general plan and zoning, such as traditional pharmacies;

C. The ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since the permitted medical marijuana dispensary business under the ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

D. The ordinance is exempt under Section 15303 (new construction or conversion of small structures). The medical marijuana business will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

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

SECTION 1.Chapter 9.22 of the Nevada City Municipal Code entitled “Medical Marijuana Dispensaries,” is hereby repealed in its entirety, shall be retitled “Medial Marijuana Dispensaries and other Marijuana Businesses and Activity” and replaced with the following language:

Chapter 9.22 MEDICAL MARIJUANA DISPENSARIES AND OTHER MARIJUANA BUSINESSES AND ACTIVITY.

9.22.010. General Provisions.

A. Purpose and Intent.

It is the purpose and intent of this Chapter to accommodate the needs of medically-ill persons in need of marijuana for medical purposes, as advised and recommended by their health care provider(s), while imposing regulations on the use of land to protect the City's neighborhoods, residents, and businesses from negative impacts. It is a further purpose and intent of this Chapter to regulate the cultivation, manufacturing, processing, testing, transporting, delivery, and distribution of cannabis and cannabis-related products in a manner which is responsible, which protects the health, safety, and welfare of the residents of Nevada City, and to enforce rules and regulations consistent with state law. In part to meet these objectives, an annual permit shall be required in order to own and/or to operate a medical marijuana business within Nevada City. Nothing in this Chapter is intended to authorize the possession, use, or provision of marijuana for purposes which 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, county, or other law.

B. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, and the provisions of the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"), the City of Nevada City is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis-related activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Nevada City to cannabis, and/or cannabis-related activity.

C. Marijuana cultivation and medical marijuana business activities prohibited unless specifically authorized by this Chapter.

Except as specifically authorized in this Chapter, the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, dispensing, distribution, delivery, or sale of cannabis or a cannabis product is expressly prohibited in the City of Nevada City.

D. Compliance with Laws.

It is the responsibility of the owners and operators of the medical marijuana business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions which violate federal, state law or local law with respect to the operation of a medical marijuana business. It shall be the responsibility of the owners and the operators of the medical marijuana business to ensure that the medical marijuana business is, at all times, operating in a manner compliant with all applicable federal, state and local laws, the 2008 Attorney General Guidelines, any subsequently enacted state law or regulatory, licensing, or certification requirements, and

any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the medical marijuana business permit. Nothing in this Chapter shall be construed as authorizing any actions which violate federal or state law with regard to the operation of a medical marijuana business.

9.22.020. Definitions.

When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder, and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

(a) "Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(b) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

(c) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

(d) "City" or "City of Nevada City" means the City of Nevada City, a California general law City.

(e) "Cultivation" means any activity, whether occurring indoors or outdoors, involving the propagation, planting, growing, harvesting, drying, curing, grading, and/or trimming of cannabis plants or any part thereof for any purpose, including medical marijuana.

(f) "Cultivation site" means a facility where medical cannabis is cultivated, propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

(g) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined to be authorized by the State of California, or any of its departments or divisions, to anyone for any purpose. "Delivery" also includes the use by a dispensary of any technology platform owned, controlled, and/or licensed by the dispensary, or independently licensed by the State of California under the MCRSA (as the same may be amended from time-to-time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(h) "Dispensary" means a medical marijuana business facility where cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that delivers, pursuant to express authorization, medical cannabis and medical cannabis products as part of a retail sale.

(i) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(j) "Distribution" means the procurement, sale, and transport of medical cannabis or medical cannabis products between entities licensed pursuant to the MCRSA and any subsequent State of California legislation regarding the same.

(k) "Distributor" means a person engaged in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a license manufacturer, for sale to a licensed dispensary.

(l) "Dried flower" means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(m) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible medical cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

(n) "Live plants" means living medical cannabis flowers and plants, including seeds, sprouts, immature plants (including unrooted clones), and vegetative stage plants.

(o) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as defined in this section, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container.

(p) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate or manufactured product intended for internal consumption or topical application.

(q) "Manufacturing site" means a location that produces, prepares, propagates, or compounds medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(r) "Marijuana" means "cannabis," as that term is defined in this Chapter.

(s) "Medical cannabis", "medical marijuana," "medical cannabis product" or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code (as the same may be amended from time-to-time). For purposes of this Chapter, "medical cannabis" does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(t) "Medical marijuana activity" includes cultivation, manufacture, processing, laboratory testing, transporting, delivery, distribution, or sale of medical cannabis or a medical cannabis product, within the meaning of California Business and Professions Code 19300 et seq.

(u) "Medical marijuana business" means any business or operation which engages in medical marijuana activity.

(v) "Medical marijuana business permit" means a regulatory permit issued by the City of Nevada City pursuant to this Chapter to a medical marijuana business, and is required before any medical marijuana activity may be conducted in the City. The initial permit and annual renewal of a medical marijuana 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 medical marijuana activity at issue.

(w) "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 11362.5. For purposes of this ordinance, qualified patient shall also refer to qualified patients who have obtained an identification card from the State Department of Health Services, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

(x) "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 and includes the plural as well as the singular number.

(y) "Person with an identification card" shall have the meaning given that term by California Health and Safety Code Section 11362.7.

(z) "State License" means a permit or license issued by the State of California, or one of its departments or divisions, under MCRSA to engage in medical marijuana activity.

(aa) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

(bb) "Testing laboratory" means a facility, entity, or site that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(cc) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting medical marijuana activity authorized by the MCRSA.

(dd) "Transporter" means a person authorized to transport medical cannabis or medical cannabis products in amounts authorized by the State of California, or by one of its departments or divisions under the MCRSA.

9.22.030. Medical Marijuana Business Permits Required for Owner/Operator; Medical Marijuana Work Permit Required for Employees.

A. Medical Marijuana Business Permit Required to Engage in Medical Marijuana Business.

(a) No person may engage in any medical marijuana business or in any medical marijuana activity within the City of Nevada City including cultivation, manufacture, processing, laboratory testing, transporting, dispensing, distribution, or sale of medical cannabis or a medical cannabis product unless the person (1) has a valid medical marijuana business permit from the City of Nevada City and (2) is currently in compliance with all applicable state and local laws and regulations pertaining to the medical marijuana business and the medical marijuana business activities, including the duty to obtain any required state licenses.

(b) Until Health & Safety Code Section 11362.775, subdivision (a), is repealed, the City intends that persons eligible to operate collectives or cooperatives under that subdivision shall be eligible to apply for a City permit to conduct medical marijuana activities, but only to the degree those activities are authorized under state law for collectives and cooperatives. When the Health & Safety Code Section 11362.775, subdivision (a), is repealed, or as soon as collectives and cooperatives are no longer permitted under state law, any City permit holder operating as a collective or cooperative who has not already obtained a state license for the medical marijuana business activities they are engaged in shall automatically forfeit his or her City medical marijuana business permit. At that point they shall no longer be authorized to engage in any medical marijuana activities in the City until they obtain both a City issued medical marijuana business permit and a state license for that medical marijuana activity.

B. Medical Marijuana Employee Permit Required.

1. Any person who is an employee or who otherwise works or volunteers within a medical marijuana business must be legally authorized to do so under applicable state law. Employees, workers, or volunteers at a business that is permitted by the City of Nevada City as a medical marijuana dispensary operating pursuant to Health & Safety Code section 11362.775 (a) as a collective or cooperative until that subsection is repealed must be qualified patients or primary caregivers as required by state law.

2. Any person who is an employee or who otherwise works or volunteers within a medical marijuana business must obtain a medical marijuana employee work permit from the City prior to performing any work at any medical marijuana business.

3. Applications for medical marijuana employee work permits shall be developed and made available by the City Manager, and shall include, but not be limited to, the following information:

(1) Name, address, and phone number of the applicant;

(2) Age and verification of applicant. A copy of birth certificate or other proof that the applicant is at least eighteen (18) years of age must be submitted with the application;

(3) Name, address of the medical marijuana businesses where the person will be employed, and the name of the primary manager of that business;

(4) A list of any crimes for which the applicant has been convicted;

(5) Name, address, and contact person for any previous employers from which the applicant was fired, resigned, or asked to leave and the reasons for such dismissal or firing;

(6) The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the City Manager or his/her designee(s)

(7) A signed statement under penalty of perjury that the information provided is true and correct.

(8) If applicable, verification that the applicant is a qualified patient or primary caregiver.

(9) A fee paid in an amount set by resolution of the City Council in an amount necessary to cover the costs of administering the employee work permit programs. The fee is non-refundable and shall not be returned in the event the work permit is denied or revoked.

4. The City Manager or his or her designee shall review the application for completeness, shall work with the police department to conduct a background check to be conducted pursuant to California Penal Code sections 11105(b)(11) and 13300(b)(11) which authorizes city authorities 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 to verify the criminal record, and shall contact previous employers from which the applicant was fired or resigned in order to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant:

(a) Is dishonest or untrustworthy; or

(b) Was convicted of a felony, a violent crime, or crime of moral turpitude.

If the City Manager or his or her designee discovers documented evidence showing that the applicant was terminated or resigned from previous employment for dishonest or untrustworthy conduct that would indicate that the employee may not be trusted to follow all of the requirements of this Chapter and other applicable laws pertaining to the operation of medical marijuana dispensaries, or if the employee has been convicted of any of the types of crimes described in subdivision (b) above, the City Manager or his or designee may deny the permit on those grounds.

5. The City Manager shall issue the medical marijuana work permit or a written denial to the applicant within ninety (90) days of the date the application was deemed complete. The City Manager shall issue a temporary work permit valid for no more than ninety (90) days to employees who have filed a completed application for an employee work permit. The employee may begin work with the temporary work permit while the City Manager or his or designee conducts the background investigation and completes the review of the application. The temporary work permit shall automatically and immediately be revoked upon notification that City has denied of the application for the work permit application or upon ninety (90) days, whichever occurs first.

6. A work permit shall be valid for a twelve (12) month period and must be renewed on an annual basis. Renewal applications shall contain all the information required for initial applications, including the payment of a renewal application fee in an amount to be set by resolution of the City Council.

7. In the event a person changes employment from one medical marijuana business in the City to another, the work permit holder shall notify the City Manager or his/her designee(s) in writing of the change within ten (10) days, or the work permit shall be suspended or revoked and such person shall not be permitted to work at any medical marijuana business in the City.

8. The City may immediately revoke the medical marijuana work permit should the permit holder be convicted of a crime listed in subsection (c) above. If facts become known to the City Manager or his/her designee that the permit holder has engaged in activities showing that the he or she is dishonest or untrustworthy tending to show that the employee may not be trusted to uphold the requirements of this Chapter or other laws, the medical marijuana work permit shall be immediately suspended. The employee shall have ten (10) days from the suspension to request a hearing to appeal the suspension of the medical marijuana work permit. If the employee does not request a hearing to appeal the suspension, the work permit shall be revoked at the end of the ten (10) appeal hearing. If the employee requests an appeal hearing, the hearing shall be held by the City Manager or his or her designee within thirty (30) days from the date of the appeal hearing request is made. The City Manager shall hear evidence of the alleged dishonest or untrustworthy conduct, and shall hear a response from the employee along with evidence refuting or explaining the allegations. At the conclusion of the hearing, the City Manager or his or her designee shall render his or her decision in writing whether to overturn the suspension and reinstate the employee work permit, or to revoke the work permit within ten (10) days

of the hearing date. The decision shall be fair and well-reasoned, based on the credibility of the evidence presented at the hearing. The decision of the City Manager shall be final.

9. The City Manager or his/her designee(s) is hereby authorized to promulgate all regulations necessary to implement the work permit process and requirements.

10. The applicant may appeal the denial or revocation of a medical marijuana work permit by filing a notice of appeal with the City Clerk within ten (10) days of the date the applicant received the notice of denial, which appeal shall be conducted as set forth in Section 9.22.060 entitled “Appeals” of this Chapter.

11. The City Manager or his or her designee shall issue a permit in the form of a personal identification card that can be worn by the employee. The personal identification card shall be worn approximately chest-high on their outermost garment, in a prominent and visible location. The identification card shall be maintained in good and readable condition at all times.

9.22.040. MEDICAL MARIJUANA DISPENSARIES

The City may authorize one (1) medical marijuana dispensary to operate within the City of Nevada City. The medical marijuana dispensary must obtain a medical marijuana business permit from the City before commencing operations, must be in compliance with all applicable state and federal laws pertaining to its operation, including obtaining all necessary licenses from the state, and shall comply with all applicable operational and zoning requirements set forth in the Nevada City Municipal Code. Nothing in this Chapter creates a mandate that the City Council must issue a medical marijuana business permit to a medical marijuana dispensary.

9.22.050. Application for Medical Marijuana Business Permit: Renewal Applications; and Effect of Revocation or Suspension of State License.

A. Initial Application Procedure.

(1) The City Council shall adopt by resolution the procedures which will govern the application process, and the manner in which the decision will ultimately be made regarding the issuance of any medical marijuana business permit(s). The resolution shall authorize the City Manager or his or her designee to prepare the necessary forms, adopt any necessary rules, regulations and processes, solicit applications, conduct initial evaluations of the applicants, and to ultimately provide a final recommendation to the City Council.

(2) At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.

(3) After the initial review the City Manager or his designee will make a recommendation to the City Council, and the City Council shall make a final determination in accordance with the selection procedure set forth in the Resolution adopted by the City Council.

(4) THE CITY'S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. The City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to any other justification provided a failure to comply with other requirements in this Chapter, an application RISKS BEING REJECTED for any of the following reasons:

(1) Proposal received after designated time and date.

(2) Proposal not containing the required elements, exhibits, nor organized in the required format.

(3) Proposal considered not fully responsive to this request for permit application.

(4) Proposal contains excess or extraneous material not called for in the request for permit application.

B. Expiration of Medical Marijuana Business Permits. Each medical marijuana business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Medical marijuana permits may be renewed as provided in subsection D below.

C. Revocation of Permits. Medical Marijuana Business Permits may be revoked for any violation of any law and/or any rule, regulation and/or standard adopted pursuant to this Chapter 9.22.

D. Renewal Applications.

(1) An application for renewal of a medical marijuana business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.

(2) The renewal application shall contain all the information required for new applications.

(3) The applicant shall pay a fee in an amount to be set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.

(4) An application for renewal of a medical marijuana business permit shall be rejected if any of the following exists:

(a) The application is filed less than sixty (60) days before its expiration.

(b) The medical marijuana business permit is suspended or revoked at the time of the application.

(c) The medical marijuana business has not been in regular and continuous operation in the four (4) months prior to the renewal application.

(d) The medical marijuana business has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.

(e) The permittee fails or is unable to renew its State of California license.

(f) If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter, of the City's Municipal Code, or of the state rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the medical marijuana business permit.

(5) The City Manager or his designee is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the City Manager or his designee is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the City Manager or his designee shall be handled pursuant to Section 9.22.060 entitled "Appeals."

(6) If a renewal application is rejected, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

E. Effect of state license suspension, revocation, or termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a medical marijuana business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a medical marijuana business, such revocation or termination shall also revoke or terminate the ability of a medical cannabis business to operate within the City of Nevada City.

9.22.060. Appeals.

A. Appeals from Decisions of the City Manager or his Designee under this Chapter. Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his or her designee, the appeal shall be conducted as prescribed in this Section.

B. Written request for Appeal.

(1) Within ten (10) calendar days after the date of a decision of the City Manager or his designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, an 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.

(2) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

C. Appeal Hearing.

(1) 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 forth by the City.

(2) The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.

(3) At the hearing the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.

(4) At the conclusion of the hearing the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be final.

9.22.070. Permittee Selection Process.

A. Selection and Review of Finalists.

(1) The City Council shall adopt by resolution a procedure by which the top three applicants applying for a medical marijuana business to operate a medical marijuana dispensary in the City will be presented to the City Council for a final determination at a public hearing.

(2) The top three finalists shall be invited to attend the City Council meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.

(3) At least ten (10) days prior to the hearing, notice of the hearing shall be sent to all property owners located within three hundred (300) feet of the proposed business locations of each of the finalists to be considered by the City Council.

(4f) The City Council shall rank the final three candidates and shall select the top candidate, which candidate shall become the prevailing candidate. The City Council's decision as to the selection of the prevailing candidate shall be final.

(5) Official issuance of the medical marijuana business permit to the medical marijuana dispensary, however, is conditioned upon the prevailing candidate obtaining all required land use approvals. Following the Council's selection, the prevailing candidate shall apply to the City's planning department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of the California Environmental Quality Act (CEQA). The City Manager shall formally issue the medical marijuana business permit once the City Manager and Chief of Police have both affirmed that all of the required land use approvals have been obtained.

(6) Issuance of a medical marijuana business permit does not create a land use entitlement. The medical marijuana business permit shall only be for a

term of twelve (12) months, and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with.

(7) Notwithstanding anything in this Chapter to the contrary, the City Council reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a medical marijuana business permit until a permit is actually issued, and then only for the duration of the permit's term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.

(8) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.

(9) A person granted a medical marijuana business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the medical marijuana business permit program created in this Chapter.

B. Prohibition on Transfer of Medical Marijuana Business Permits.

1. No person may transfer ownership or control of a medical marijuana business or transfer any medical marijuana business permit issued under this Chapter. Medical marijuana business permits are not a property right, and permittees have no economic interest in any permit issued to them. Permittees have no right to sell or transfer a medical marijuana business permit to another party, or to have the City Council consider whether they should authorize the transfer of a medical marijuana business permit to another party. Any attempt to transfer ownership of a medical marijuana business or of a medical marijuana business permit shall render the medical marijuana business permit void.

2. Any attempt to transfer a medical marijuana business permit or a medical marijuana business shall result in the medical marijuana business permit being declared immediately revoked and/or it is void and no longer of any effect.

3. In any situation where a permit has been lost as a result of an attempted transfer of the medical marijuana business permit or of the medical marijuana business, or as a result of the abandonment or revocation of the permit, any new permit shall be issued using the standard process for the issuance of permits in the first instance. No preference shall be given to any person proposed as new owner or assignee by the former permit holder. In such case, prior to accepting any new

applications, the City shall post the availability of the medical marijuana business permit at issue on the City's website. The City Manager or his/her designee may take other actions to help ensure the broadest pool of applicants for the new permit.

9.22.080. Requirements Before Permittee May Commence Operations.

A. City Business License. Prior to commencing operations a medical marijuana business shall obtain a City of Nevada City business license.

B. Building Permits and Inspection. Prior to commencing operations a medical marijuana business shall be subject to a mandatory building inspection, and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes but is not limited to obtaining any required building permit(s), fire department approvals, Health Department approvals and other zoning and land use permit(s) and approvals.

C. Certification from Planning Director. Prior to commencing operations, a medical marijuana business must obtain a certification from the Planning Director certifying that the business is located on a site that meets all of the requirements of the City's Zoning and Municipal Code, including Chapter 17.142 (Medical Marijuana Uses and Activities).

D. Right to Occupy and to Use Property. As a condition precedent to the City's issuance of a medical marijuana business permit pursuant to this Chapter, any person intending to open and to operate a medical marijuana business shall provide sufficient evidence of the legal right to occupy and to use the proposed location. In the event the proposed location will be leased from another person, the applicant 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 medical marijuana business on the owner's property.

E. Limitations on City's Liability. To the fullest extent permitted by law, the City of Nevada City shall not assume any liability whatsoever with respect to having issued a medical marijuana business permit pursuant to this Chapter or otherwise approving the operation of any medical marijuana business. As a condition to the approval of any medical marijuana business permit, the applicant shall be required to meet all of the following conditions before they can receive the medical marijuana business permit:

(1) They must execute an agreement, in a form approved by the city attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Nevada 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 medical marijuana business permit, the City's decision to approve the operation of the medical marijuana business or activity, to process used by the City in making its decision, or

the alleged violation of any federal, state or local laws by the medical marijuana business or any of its officers, employees or agents.

(2) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the city attorney.

(3) Reimburse the City of Nevada City for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the City of Nevada City may be required to pay as a result of any legal challenge related to the City's approval of the applicant's medical marijuana business permit, or related to the City's approval of a medical marijuana activity. The City of Nevada City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

9.22.090. Operating Requirements for Medical Marijuana Dispensaries.

A. Records and Recordkeeping.

(1) Each owner and operator of a medical marijuana dispensary shall maintain accurate books and records, detailing all of the revenues and expenses of the dispensary, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a medical marijuana business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each medical marijuana dispensary shall file a sworn statement detailing the number of sales by the medical marijuana dispensary 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 paid or due to be paid.

(2) Each owner and operator of a medical marijuana dispensary 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 medical marijuana dispensary, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the medical marijuana dispensary. The register required by this paragraph shall be provided to the City Manager or his/her designee(s) upon a reasonable request.

(3) Each medical marijuana dispensary shall maintain a record of all persons, patients, collectives and primary caregivers served by the medical marijuana dispensary, for a period of no less than four (4) years.

(4) Medical marijuana dispensaries shall maintain records of their inventory acquired, including the name and address of each supplier, the date of acquisition and the quantity acquired from each supplier, and the location of the cultivation of the supplier, and shall maintain a copy of the supplier's state license to cultivate (if required).

(5) Subject to any restrictions under the Health Insurance Portability and Accountability Act regulations, each medical marijuana dispensary shall allow City of Nevada City officials to have access to the dispensary's books, records, accounts, together with any other data or documents relevant to its permitted medical marijuana activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City.

B. Security Measures.

(1) A permitted medical marijuana dispensary shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing medical cannabis or medical cannabis products, and to deter and prevent the theft of medical cannabis or medical cannabis products at the medical marijuana dispensary. Except as may otherwise be determined by the City Manager or his/her designee(s), these security measures shall include, but shall not be limited to, all of the following:

(a) Preventing individuals from remaining on the premises of the medical marijuana dispensary if they are not engaging in an activity directly related to the permitted operations of the medical marijuana dispensary.

(b) Establishing limited access areas accessible only to authorized medical marijuana dispensary personnel.

(c) All medical cannabis and medical cannabis products shall be stored in a secured and locked room, safe, or vault. All medical cannabis and medical cannabis products, shall be kept in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes or for immediate sale at a dispensary.

(d) Installing 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to and from the premises, all interior spaces within the medical marijuana dispensary which are open and accessible to the public, and all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis. The medical marijuana dispensary shall be

responsible for ensuring that the security surveillance camera's footage is remotely accessible by the City Manager or his/her designee(s), and the City's Police Department, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the City Manager or his/her designee(s) and to the City's police department. Video recordings shall be maintained for a minimum of forty-five (45) days, and shall be made available to the City Manager or his designee upon request.

(e) Sensors shall be installed to detect entry and exit from all secure areas.

(f) Panic buttons shall be installed in all medical marijuana dispensaries.

(g) Having a professionally installed, maintained, and monitored alarm system.

(h) Any bars installed on the windows or the doors of the medical marijuana dispensary shall be installed only on the interior of the building.

(i) Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager or his/her designee(s), with such approval not to be unreasonably withheld.

(j) Each medical marijuana dispensary shall have the capability to remain secure and operational during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

(k) Entrances into the dispensary shall be locked at all times with entry strictly controlled. A "buzz-in" electronic/mechanical entry system shall be utilized to limit access to and entry to the dispensary, to separate it from the reception/lobby area. Individuals must show their cannabis card in order to gain access into the dispensary.

(l) Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities.

(2) A medical marijuana dispensary shall identify a designated security representative/liaison to the City of Nevada City, who shall be reasonably available to meet with the City Nevada City or his/her designee regarding any security related measures or and operational issues.

(3) As part of the application and permitting process a medical marijuana dispensary shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, and any currency.

(4) The medical marijuana dispensary shall cooperate with the City whenever the City Manager or his designee makes a request, upon reasonable notice to the medical marijuana dispensary, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

(5) A medical marijuana dispensary shall notify the City Manager or his/her designee(s) within twenty-four (24) hours after discovering any of the following:

(a) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager or his/her designee.

(b) Diversion, theft, loss, or any criminal activity involving the medical marijuana dispensary or any agent or employee of the medical marijuana dispensary.

(c) The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the medical marijuana dispensary.

(d) Any other breach of security.

C. Restriction on Alcohol Sales.

No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the medical marijuana dispensary.

D. Compliance with Laws.

It is the responsibility of the owners and operators of the medical marijuana dispensary to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions which violate state law or local law with respect to the operation of a medical marijuana dispensary. It shall be the responsibility of the owners and the operators of the medical marijuana dispensary to ensure that the medical

marijuana dispensary is, at all times, operating in a manner compliant with all applicable state and local laws, the 2008 Attorney General Guidelines, any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the medical marijuana business permit. Nothing in this Chapter shall be construed as authorizing any actions which violate state law with regard to the operation of a medical marijuana dispensary.

E. Fees, Charges and Taxes.

(1) No person may commence or continue any medical marijuana activity in the City, without timely paying in full all fees, charges, and any applicable taxes required for the operation of a medical marijuana business. Fees and charges associated with the operation of a medical marijuana activity shall be established by resolution of the City Council which may be amended from time to time.

(2) A medical marijuana dispensary 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. Medical marijuana dispensaries shall cooperate with City with respect to any reasonable request to audit the medical marijuana dispensary's books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

F. Miscellaneous Operating Requirements.

(1) Hours of Operation. Medical marijuana dispensaries may be open for access to the public only between the hours of 8:00 A.M. and 8:00 P.M. Monday through Sunday.

(2) Restriction on Consumption. Cannabis shall not be consumed on the premises of any medical marijuana dispensary or elsewhere in the City of Nevada City other than within private residences.

(3) No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a medical marijuana dispensary, or on any of the vehicles owned or used as part of the medical marijuana dispensary. No outdoor storage of cannabis or cannabis products is permitted at any time.

(4) Reporting and Tracking of Product and of Gross Sales. Each medical marijuana dispensary shall have in place a point-of-sale tracking system to track and report on all aspects of the medical marijuana dispensary including, but not limited to, such matters as cannabis tracking, inventory

data, and gross sales (by weight and by sale). The medical marijuana dispensary shall ensure that such information is compatible with the City's record-keeping systems. The system must have the capability to produce historical transactional data for review by the City Manager or his/her designee.

(5) All cannabis and cannabis products sold, distributed or manufactured shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with the State and local regulations.

(6) There shall not be a physician located in or on the grounds of any medical marijuana dispensary at any time for the purpose of evaluating patients for the issuance of a medical marijuana prescription or card.

(7) Prior to dispensing cannabis or cannabis products to any person, the medical marijuana dispensary shall obtain verification from the recommending physician that the person requesting cannabis or cannabis products is a qualified patient.

(8) Emergency Contact. Each medical marijuana dispensary shall provide the City Manager or his/her designee(s) with the name, telephone number (mobile preferred, if available) of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.

(9) Signage and Notices.

(a) In addition to the requirements otherwise set forth in this section, business identification signage for a medical marijuana dispensary shall conform to the requirements of the Nevada City Municipal Code, including, but not limited to, seeking the issuance of a City sign permit.

(b) No signs placed on the premises of a medical marijuana dispensary shall obstruct any entrance or exit to the building or any window.

(c) Each entrance to a medical marijuana dispensary shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the medical marijuana dispensary is prohibited.

(d) Business identification signage shall be limited to that needed for identification only, and shall not contain any logos or information that identifies, advertises, or lists the services or the products offered. No medical marijuana dispensary shall advertise by having a person holding a sign and advertising the business to passersby, whether

such person is on the premises of the medical marijuana dispensary or elsewhere including, but not limited to, the public right-of-way.

(e) Signage shall not be directly illuminated, internally or externally. No banners, flags, billboards or other prohibited signs may be used at any time.

(f) Holders of medical marijuana business permits agree that, as an express and ongoing condition of permit issuance and subsequent renewal, the holder of the permit shall be prohibited from advertising any medical marijuana business located in the City of Nevada City utilizing a billboard (fixed or mobile), bus shelter, placard, aircraft, or other similar forms of advertising, anywhere in the state. This paragraph is not intended to place limitations on the ability of a medical marijuana business to advertise in other legally authorized forms, including on the internet, in magazines, or in other similar ways.

(10) Minors.

(a) Persons under the age of eighteen (18) years shall not be allowed on the premises of a medical marijuana dispensary and shall not be allowed to serve as a driver for a mobile delivery service. It shall be unlawful and a violation of this Chapter for any person to employ any person at a medical marijuana dispensary who is not at least eighteen (18) years of age.

(b) The entrance to the medical marijuana dispensary shall be clearly and legibly posted with a notice that no person under the age of eighteen (18) years of age is permitted to enter upon the premises of the medical marijuana dispensary.

(c) Owners and Operators are required to verify the age and the necessary documentation of each customer to ensure the customer is not under the age of eighteen (18) years, and to verify that the potential customer has a valid doctor's recommendation.

(11) Odor Control. Odor control devices and techniques shall be incorporated in all medical marijuana dispensaries to ensure that odors from marijuana are not detectable off-site. Medical marijuana dispensaries shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the medical marijuana dispensary that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other

areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the medical marijuana dispensary. As such, a medical marijuana dispensary must install and maintain the following equipment, or any other equipment which the City Manager or his/her designee(s) determine is a more effective method or technology:

(1) an exhaust air filtration system with odor control that prevents internal odors from being emitted externally. The dispensary applicant shall provide a statement from the exhaust air filtration manufacturer that the system has been designed to achieve the above standard based on the specific building size and layout;

(2) An air system that creates negative air pressure between the medical marijuana dispensary's interior and exterior, so that the odors generated inside the medical marijuana dispensary are not detectable on the outside of the medical marijuana dispensary. The dispensary applicant shall provide a statement from the air system manufacturer that the system has been designed to achieve the above standard based on the specific building size and layout

(12) Display of Permit and City Business License. The original copy of the medical marijuana business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the medical marijuana dispensary in a location readily-visible to the public.

(13) Background Check. Pursuant to California Penal Code sections 11105(b)(11) and 13300(b)(11), which authorizes city authorities 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, every person listed as an owner, manager, supervisor or employee of the medical marijuana dispensary must submit fingerprints and other information deemed necessary by the City Manager or his/her designee(s) for a background check by the Nevada City Police Department. Pursuant to California Penal Code sections 11105(b)(11) and 13300(b)(11), which requires that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record, no person shall be issued a permit to operate a medical marijuana dispensary or a related work permit unless they have first cleared the background check, as determined by the Chief of Police, as required by this section. A fee for the cost of the background investigation, which shall be the actual cost to the City of Nevada City to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a medical marijuana

business permit is submitted. The applicant(s) shall provide an initial deposit in an amount the City Manager or his/her designee(s) estimates will cover the cost of the background investigation, which shall be used and drawn upon as a retainer to cover the actual costs of such investigation. If this amount is not sufficient, the applicant shall provide additional amounts that are necessary and if the applicant is unable to provide the additional amounts necessary to complete the investigation, the investigation shall cease and shall not continue until such additional amounts are paid. Upon completion of the investigation or in the event the applicant withdraws their application, any fees paid for this process will be deemed non-refundable.

(14) Loitering. The owner and/or operator of a medical marijuana dispensary shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises of the business.

(15) Permits and other Approvals. Prior to the establishment of any medical marijuana dispensary or the operation of any such business, the person intending to establish a medical marijuana dispensary must first obtain all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such medical marijuana dispensary intends to establish and to operate.

(16) If a medical marijuana dispensary permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), members of the applicant authorized to possess cannabis shall sign an agreement with the medical marijuana dispensary which states that members shall not distribute cannabis or cannabis products to non-members or in violation of the “Memorandum for all United States Attorneys,” issued by the United States Department of Justice, from James M. Cole, Deputy Attorney General and any other applicable state and federal laws, regulations, or guidelines.

(17) If the medical marijuana dispensary permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), the medical marijuana dispensary shall terminate the membership of any member violating any of the provisions of this Chapter.

(18) Dispensaries may have on-site, in the retail sales area of the dispensary, only that quantity of cannabis and cannabis products reasonably anticipated to meet the daily demand readily available for sale. Dispensaries may also sell non-cannabis products, such as cannabis and health related educational books and publications, inhalation/ingestion delivery devices, apparel, and the like. However, sales of non-cannabis products shall constitute no more than 15% of the sales floor area, not to exceed 300 square feet.

(19) All restroom facilities shall remain locked and under the control of management.

G. The City Manager or his/her designee may develop other medical marijuana dispensary operational requirements or regulations as are determined to be necessary to protect the public health, safety and welfare.

9.22.100 Application of Chapter; Other Legal Duties.

A. Promulgation of Regulations and Standards.

(1) In addition to any regulations adopted by the City Council, the City Manager or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of medical marijuana business permits, the ongoing operation of a medical marijuana dispensary and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.

(2) Regulations shall be published on the City's website.

(3) Regulations promulgated by the City Manager shall become effective upon date of publication. A medical marijuana dispensary 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 designee.

B. Community Relations.

(1) Each medical marijuana dispensary shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the medical marijuana dispensary can be provided. Each medical marijuana dispensary shall also provide the above information to all businesses and residences located within one hundred (100) feet of the medical marijuana dispensary property and shall provide opportunity for those businesses and residents within one hundred (100) feet to visit and to tour the medical marijuana dispensary at least once on a mutually convenient date and time. Any additional request shall be at the sole discretion of the dispensary operator.

(2) During the first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from the medical marijuana dispensary holding a permit issued pursuant to this Chapter shall attend a quarterly meeting with the City Manager or his/her designee(s) to

discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the owner, manager, and community relations representative from the medical marijuana dispensary shall meet with the City Manager or his/her designee(s) when and as requested by the City Manager or his/her designee(s).

(3) The medical marijuana dispensary to which a permit is issued pursuant to this Chapter shall develop and make available to youth organizations and educational institutions a public education plan that outlines the risks of youth addiction to marijuana, and that identifies resources available to youth related to drugs and drug addiction.

C. Fees Deemed Debt to City of Nevada City.

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

D. Permit Holder Responsible for Violations.

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

E. Inspection and Enforcement.

(1) The City Manager or his/her designee(s) are charged with enforcing the provisions of the Nevada City Municipal Code, or any provision thereof, may enter the location of a medical marijuana business at any time during the hours of operation without notice, and inspect the location of any medical marijuana business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.

(2) It is unlawful for any person having responsibility over the operation of a medical marijuana dispensary, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a medical marijuana dispensary 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 medical marijuana business under this Chapter or under state or local law.

(3) The City Manager or his/her designee(s) charged with enforcing the provisions of this Chapter may enter the location of a medical marijuana dispensary at any time during the hours of operation and without notice to obtain samples of the cannabis to test for public safety purposes. Any samples obtained by the City of Nevada City shall be logged, recorded, and maintained in accordance with Nevada City Police Department standards for evidence.

F. Concurrent Regulation with State. It is the stated intent of this Chapter to regulate medical marijuana activity in the City of Nevada City concurrently with the state of California.

9.22.110. Violations and Enforcement.

A. Violations declared a public nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

B. 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 authorized by the Nevada City Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any permit issued pursuant to this Chapter being deemed null and void, disgorgement and payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City of Nevada City may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the medical marijuana business or persons related to, or associated with, the medical marijuana activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the City Manager, his/her designee, or the Chief of Police, may take immediate action to temporarily suspend a medical marijuana business permit issued by the City, pending a hearing before the City Council.

C. 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 2. Chapter 17.142 (Medical Marijuana Businesses and Activity) of Title 17 of the Nevada City Municipal Code is enacted as follows:

Chapter 17.142 MEDICAL MARIJUANA BUSINESSES AND ACTIVITY

17.142.010. Purpose. The purpose of this part is to further fulfill the purposes and intents set forth in Chapter 9.22 of the Nevada City Municipal Code. No person shall operate a medical marijuana dispensary without first obtaining a City medical marijuana business permit and complying with all the requirements of Chapter 9.22 of the Nevada City Municipal Code and complying with all applicable state law requirements including obtaining a license or permit required by the state to operate a medical marijuana business.

17.142.020. Definitions. Unless otherwise provided herein, the terms used in this part shall have the meanings ascribed to them in Chapter 9.22 of the Nevada City Municipal Code.

17.142.030. Location of Medical Marijuana Dispensaries.

Medical marijuana dispensaries shall be permitted only as follows:

(a) In the Light Industrial (LI) Zones.

(b) No closer than six hundred (600) feet from any portion of any parcel in the City limits containing any of the following:

(1) A school, including pre-school, transitional kindergarten, and K-12; or

(2) A public park that is managed by the City of Nevada City

17.142.040. Other Medical Marijuana Businesses Prohibited.

All other types of medical marijuana businesses including those engaged in cultivation, manufacturing, testing facilities, distributors and transporting businesses are prohibited in all zones within the City.

17.142.050. Distances measured; Applicable properties.

The distance between parcels shall be the horizontal distance measured in a straight line from any property line of the sensitive use to the closest property line of the lot on which the medical marijuana business is to be located, without regard to any intervening structures. The distance requirements in this Chapter shall only be applicable with respect to properties located in the City's limits, unless otherwise required by state law. The distance requirements shall not be applicable with respect to any property located outside the City limits.

17.142.060. Certification from Planning Director. Prior to commencing operations, a medical marijuana dispensary must obtain a certification from the Planning Director certifying that the business is located on a site that meets all of the requirements of this Title.

SECTION 3. Chapter 17.48 of the Nevada City Municipal Code entitled "Light Industrial Zone," is hereby amended to include medical marijuana dispensaries as a permitted use, subject to the requirements of Chapter 17.142:

Chapter 17.48 LIGHT INDUSTRIAL ZONE

17.48.020. Principal Permitted Uses.

In the LI zone, the following uses are permitted:

A. Automobile and truck service stations and terminals;

B. Business services, including advertising, credit, bookkeeping, employment and similar agencies, business and management consultants, stenographic, duplicating, blueprinting, photocopying and messenger services;

C. Building materials sales yards;

D. Light construction and special trade contractors, offices and shops, ornamental iron works, and sheet metal shops;

E. Offices, administrative and executive;

F. Refrigerators, furnaces and water heaters, repairs and servicing;

G. Electrical transmission and/or substations;

H. Warehousing, except mini-storage, including storage of furniture and household goods, but excluding feed and grain when handled in bulk;

I. Public utility service yard or garage;

J. Light manufacturing uses and all uses allowed in the EC zone;

K. Artists' studios, craft workshops, and cabinet shops.

L. Emergency shelters.

M. Medical Marijuana Dispensaries pursuant to the provisions outlined in Chapter 17.142.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 5. Effective Date. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in the _____, a newspaper of general circulation printed and published in the County of Nevada and circulated in the City of Nevada City and hereby designated for that purpose by the City Council.

This Ordinance was introduced and read by title only on the __th day of _____, 2016 and was passed and adopted on this __th day of _____, 2016 by the following vote:

AYES:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

_____
, Mayor

ATTEST:

_____
, City Clerk

APPROVED AS TO FORM:

_____
, City Attorney

STATE OF CALIFORNIA)
COUNTY OF NEVADA) ss.
CITY OF NEVADA CITY)

I, _____, City Clerk of _____, do hereby certify that the foregoing ordinance was introduced on the _____th day of _____, 2016, was regularly adopted at a meeting thereof on the ____th day of _____, 2016 and was published/posted pursuant to law.

_____
, City Clerk