

ORDINANCE NO. ____-2017

AN ORDINANCE OF THE CITY OF RIO VISTA REPEALING CHAPTER 17.70 OF THE RIO VISTA MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA AND REPLACING IT WITH CHAPTER 17.70 RELATING TO RECREATIONAL AND MEDICAL MARIJUANA

WHEREAS, in 1996, the voters of California approved Proposition 215, known as the Compassionate Use Act of 1996 ("CUA"), allowing the medical use of marijuana and establishing an affirmative defense for certain marijuana related criminal offenses; and

WHEREAS, in 2004, the Medical Marijuana Program Act ("MMPA") was approved by the state legislature, providing a criminal defense to qualified patients and their primary caregivers who possessed marijuana within the limits set forth in the MMPA; and

WHEREAS, in 2015, the legislature adopted the Medical Marijuana Regulation and Safety Act ("MMRSA"), which addressed state licensing with respect to medical marijuana cultivation, dispensing, and manufacturing; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), legalizing the recreational use of marijuana for adults 21 years of age and older; and,

WHEREAS, the CUA, MMPA and MCRSA allow cities to regulate medical marijuana pursuant to their respective police powers and land use authority; and

WHEREAS, the AUMA, while allowing cities to retain their police powers and land use authority, allows cities to regulate but not prohibit indoor cultivation of up to a total of six marijuana plants per residence, and to regulate or prohibit cultivation, as well as commercial activity related to marijuana; and

WHEREAS, in light of these developments in state law, and in the interest of applying consistent law enforcement guidelines, the City now desires to amend its Municipal Code to establish an ordinance addressing all marijuana activities in the City; and

WHEREAS, the City of Rio Vista re-affirms and confirms that the zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, California Health & Safety Code section 11362.777(b)(3) states that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning and may only issue a license if local regulations have been complied with; and

WHEREAS, the establishment of dispensaries and deliveries of marijuana are only allowed pursuant to the regulations set forth herein; and

WHEREAS, the City Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the City Council further finds that the Ordinance is exempt pursuant to the findings set forth in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIO VISTA DOES HEREBY ORDAINS AS FOLLOWS:

Section 1. Purpose & Authority. The purpose of this Ordinance is to regulate marijuana activities in a manner that protects the health, safety, and welfare of the community, consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). This chapter is not intended to interfere with a patient's right to medical marijuana, as provided in Health and Safety Code section 11362.5, nor does it criminalize marijuana possession or use, pursuant to state law. This chapter is not intended to give any person the unfettered right to grow marijuana; rather, it is intended to impose zoning restrictions on the personal indoor cultivation permitted pursuant to the AUMA.

Section 2. Findings. The recitals set forth above are hereby incorporated by reference. Additionally, the City Council finds as follows:

1. Unregulated marijuana activities, including, but not limited to, cultivation and manufacturing, may have significant health, safety, and welfare impacts on the residents of the City.

2. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.

3. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.

4. Health and Safety Code section 11362.83 and the AUMA expressly allow cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420 and the AUMA.

5. Cultivation of any amount of marijuana at locations or premises within 600 feet of schools, child care centers, or parks creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

6. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

7. It is the purpose and intent of this chapter to require that marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown remains secure and does not find its way to non-patients (if under 21) or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to the CUA (Health and Safety Code section 11362.5) or the MMPA (Health and Safety Code section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for purposes in violation of state or federal law.

8. It is the purpose and intent of this chapter to implement state law by providing a means for regulating marijuana activities in a manner that is consistent with state law and which balances the needs of patients and recreational users while promoting the health, safety, and welfare of the residents and businesses in the City of Rio Vista. This chapter is intended to be consistent with Proposition 215, Senate Bill 420, the MMRSA, , and the AUMA, and to that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, dispensed, and delivered in the City.

9. The limited right of people under state law to cultivate marijuana plants does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the City will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the City.

Section 3. Repeal and Enactment. Chapter 17.70 of the Rio Vista Municipal Code is hereby repealed in its entirety and re-enacted as follows:

Chapter 17.70

MARIJUANA REGULATIONS

Sections:

- 17.70.10 Definitions**
- 17.70.20 Cultivation of Marijuana Regulated.**
- 17.70.30 Marijuana Deliveries and Mobile Dispensaries.**
- 17.70.40 Marijuana Dispensaries.**
- 17.70.50 Smoking Prohibited in Public Places.**
- 17.70.060 Appeals**
- 17.70.070 Indemnification**
- 17.70.80 Enforcement.**

17.70.10 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

- A. “Authorized grower” means a person twenty-one years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal or medical use. Authorized grower also means a person eighteen years and older who is a qualified patient, as that term is described in Health and Safety Code section 11362.77.
- B. “Child care center” means any licensed child care center, daycare center, or child care home, or any preschool.
- C. “Cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.
- D. “Delivery of Marijuana” means the commercial transfer of marijuana or medical cannabis products from a dispensary, up to an amount determined by the bureau of primary care giver or qualified patient as defined in Section 11362.7 of the California Health & Safety Code, or a testing laboratory. Delivery also includes the use by a dispensary or any technology platform owned and

controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products as defined in California Business and Professions Code section 19300.5(m)).

E. "Indoors" means within a fully enclosed and secure building.

F. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Sections 66410 et seq. of the Government Code).

G. "Marijuana" shall mean any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated 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, including marijuana infused in foodstuff or other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as defined in California Health and Safety Code section 11362.5 and "medical cannabis", "medical cannabis product" and "cannabis product" as defined in California Business and Professions Code section 19300.5 (ag).

H. "Marijuana dispensary" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers as defined in California Business and Professions Code section 19300.5(m), or as may be amended that dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent the purposes set forth in California Health and Safety Code section 11362.5, or as may be amended.

I. "Mobile Marijuana Dispensary" means any clinic, cooperative, club, business, group or person which transports or delivers, or arranges the transportation or delivery, of marijuana or marijuana products to a person or entity. Mobile marijuana dispensary shall not include deliveries of medical marijuana made by a permitted, lawful, marijuana dispensary, operating under state law and the provisions of this chapter, to a qualified patient or primary caregiver.

J. "Outdoor" means any location within the City that is not within a fully enclosed and secure structure.

K. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.

L. "Primary caregiver" means a "primary caregiver" as defined in Section 11362.7(d) of the Health and Safety Code.

M. "Public property" means any property owned, leased, used, rented or controlled by the city, including, but not limited to, public streets and sidewalks, parks, city facilities, open space, bike and walking trails, and recreation areas.

N. "Qualified patient" means a "qualified patient" as defined in Section 11362.7(f) of the Health and Safety Code.

O. "Residential structure" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential zoning district.

Q. "School" means an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

R. "Smoking" means inhaling, exhaling, burning or carrying any lighted combustible substance containing marijuana in any manner or in any form and use of electronic devices with electrical ignition or vaporization (e-cigarettes/cigars or similar devices) with marijuana or its by products in the device.

17.70.020 Cultivation of Marijuana Regulated.

The following regulations shall apply to the cultivation of marijuana within the City.

A. Outdoor Cultivation Prohibited. It is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

B. Indoor Cultivation for Personal Use—Regulations for Residential Zones. Indoor cultivation of marijuana for personal use, by an authorized grower, shall only be allowed in a private residence in which the authorized grower resides, in a residential zone (i.e. R-1 Residential Low Density District, R-E-1 Residential Estate One Acre District, R-2 Residential Medium Density District and R-3 Residential High Density District, R-4 Residential High Density District, Mobile Home Parks), subject to the following regulations:

1. It is unlawful and a public nuisance for any person to cultivate marijuana inside any residential structure or building without a marijuana cultivation use permit issued by the City Manager or his or her designee. Such permit shall be accompanied by the administrative processing fee, as established by resolution of the City Council.

2. The marijuana cultivation area shall be located indoors within a residential structure. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as the greenhouse is fully enclosed, secure, no plants are visible from a public right-of-way and meeting all requirements in this chapter. Indoor and greenhouse cultivation at the same time shall not be permitted on the same premise.

3. Indoor grow lights shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane, propane, and natural gas), or generators shall not be used within any structure used for the cultivation of marijuana.

4. The use of gas products such as, but not limited to, CO₂, butane, methane, or any other flammable or nonflammable gas for marijuana cultivation or processing is prohibited.

5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.

7. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

8. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4, Natural Ventilation, or section 402.3, Mechanical Ventilation (or equivalent), as amended from time to time.

9. The building official may require additional specific standards to meet the California Building Code and Fire Code, including, but not limited to, installation of fire suppression sprinklers.

10. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

11. No more than six marijuana plants, mature or immature, are permitted for indoor personal cultivation within a residential structure.

C. Indoor Cultivation for Commercial Purposes—Conditional Use Permit and Development Agreement Required.

1. The indoor cultivation of marijuana, medicinal plant research, manufacturing, and packaging of marijuana products, hereinafter called “cultivation and processing,” for commercial purposes, is conditionally permitted in the following zones: Business Park (B-P) and Industrial Park and/or Industrial (I-P-I). The Conditional Use Permit and development agreement must first be reviewed and recommended by the Planning Commission for City Council approval.

2. Cultivation Area. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate marijuana for commercial purposes, within a structure greater than a size specifically allowed by the conditional use permit.

3. Proximity to Schools, Child Care Centers, and Parks. It is unlawful and a public nuisance to cultivate marijuana on any legal parcel or premises within six hundred (600) feet of any school, child care center, or public park. The six hundred (600) feet shall be measured from the closest property line of the school, child care center, or park to the closest property line of the cultivation parcel.

4. Any structure, regardless of square footage, constructed, altered or used for the cultivation of marijuana must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Director of Community Development and Chief of Police in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for marijuana cultivation.

5. Indoor grow lights shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane, propane, and natural gas), or generators shall not be used within any structure used for the cultivation of marijuana.

6. Any structure used for the commercial cultivation of marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code section 402.3, Mechanical Ventilation, as now existing or hereafter amended. The ventilation and filtration system must be approved by the Building Official and installed prior to commencing cultivation within the detached, fully enclosed and secure structure or residential structure.

7. Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.

8. Marijuana cultivation areas shall not be accessible to persons who could not be authorized growers.

9. Prior to commencing any commercial marijuana cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where marijuana cultivation is proposed to occur must obtain a conditional use permit and a development agreement, which joint application must be reviewed by the Planning Commission for a recommendation to the City Council for approval, prior to operation.

a. The following information will be required with the initial conditional use permit application and subsequent permit extensions:

i. A notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City.

ii. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.

iii. The name of each authorized grower who participates in the marijuana cultivation.

iv. The physical site address of where the marijuana will be cultivated.

v. A signed consent form, acceptable to the City, authorizing City staff, including the Police Department authority, to conduct an inspection of the structure or area of the building for the cultivation of marijuana, upon twenty-four (24) hours' notice.

vi. In granting a conditional use permit for commercial marijuana cultivation, the city shall find the following:

1. The business has not generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the business (if applicable);

2. The business has not caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct; and

3. The proposed location, size, and other development standards of the premises are consistent with state law and this code. Cannabis cultivation must be within a fully enclosed building and must not

be visible from the public rights-of-way. The total canopy size of cannabis growing on one premise must not exceed 22,000 square feet.

vii. A development agreement approved by the City Council, which may address and require operational standards, including fees, community benefits and community enhancement efforts by the business.

b. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.

c. To the extent permitted by law, any personal or medical information submitted with a conditional use permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.

d. The City may, in its discretion, deny any application for a conditional use permit for marijuana cultivation, or extension thereof, where it finds, based on articulated facts, that the issuance of such permit, or extension thereof, does not demonstrate satisfaction of the minimum requirements of this chapter. In conjunction with reviewing a permit application, the applicant authorizes the Police Chief or his/her designee to conduct criminal background checks of any permit applicant and authorized grower. Notwithstanding any other provision of this Code, the Planning Commission may also recommend and the City Council deny an application for a conditional use permit for commercial marijuana cultivation upon finding that during the past five years the applicant or authorized grower has pled guilty, nolo contendere, or been convicted of crimes of moral turpitude (such as theft, fraud, or assault), or who is currently on parole or probation for the sale or distribution of a controlled substance, shall engage directly or indirectly in the management of the business nor, further, shall manage or handle the receipts and expenses of the business or be permitted in any area of the marijuana business. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to Section 17.70.080.

e. Each permit application shall be submitted with a fee to cover the reasonable cost of administering this chapter and processing the permit application. Such fee(s) shall be established by resolution of the City Council.

f. Permit non-transferable. A conditional use permit issued pursuant to this chapter shall become null and void upon the cessation of the commercial cultivation use, or upon transfer to anyone other than the original applicant.

g. Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the property, in the parking areas of the property.

h. A marijuana cultivation permittee shall not allow marijuana or marijuana products on the cultivation site to be visible from the public right of way,

the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

17.70.030 Marijuana Deliveries and Mobile Dispensaries.

A. Medical Marijuana Deliveries from Authorized Dispensary Allowed with Permit. It is unlawful for any marijuana dispensary to deliver, which includes, but is not limited to, dispense, distribute, exchange, transmit, transport, sell or provide, marijuana to a qualified patient or a primary caregiver without a valid permit as specified herein. Mobile dispensaries are expressly prohibited.

1. Application. The form and content of the application for a permit shall be specified by the City Manager. The application shall be signed under the penalty of perjury, and the following standards constitute the minimum standards to qualify for a permit to delivery marijuana to a qualified patient or primary caregiver:

a. Name and address of the applicant; if the applicant is a corporation, the names and addresses of its directors.

b. Certificate of insurance demonstrating ability to comply with the insurance requirements set forth in this Section in a form acceptable to the City.

c. Applicant's trade name and business address.

d. Copies of applicable authorizing state and local licenses and permits issued to applicant allowing it to operate a marijuana dispensary.

e. Listing of all vehicles and devices to be used for delivery of marijuana to a qualified patient or primary caregiver within the City, which includes the vehicle's make, model, year, license plate number and vehicle identification number.

f. Identifying all persons who will deliver marijuana on behalf of the dispensary to qualified patients located in the City.

2. Review of Application. The City Manager or designee shall consider the application, as well as the criminal records, if any, and personal references, if demanded by the City Manager, of individuals identified in the application, and any other results from investigation into the application as deemed necessary by the City Manager.

3. Grounds for Denial, Revocation or Suspension of Permit. The granting of a permit or a renewal thereof may be denied and an existing permit revoked or suspended if the applicant or permittee, or any individual engaged by the applicant or permittee to deliver marijuana in the City:

a. Has knowingly made a false statement in the application or in any reports or other documents furnished to the City.

b. Engages vehicles or devices for delivery that are neither maintained nor operated in a manner and in a condition required by law and applicable regulations.

c. Has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while under the influence, or reckless driving involving bodily injury, or who does not possess a valid driver's license.

d. Has been convicted of any offense punishable as a felony, or has been convicted within a five (5) year period immediately preceding the crime of theft in either degree. Has been convicted of any offense involving moral turpitude.

e. Violates any provision of this Chapter.

4. Permittee's Obligations. Permittee's duties and obligations shall include all of the following:

a. Comply with all applicable federal, state and local laws.

b. Obtain and maintain a business license from the City.

c. Maintain at all times all licenses and permits as required by California state law and the laws of the local jurisdiction in which the permittee is located, and provide immediate notification to the City Manager if any license or permit is suspended or revoked.

d. Package the marijuana to be delivered in compliance with California Business Professions Code section 19347 and any other regulations promulgated by the State Department of Public Health.

e. Any person who delivers marijuana from a marijuana dispensary must have in possession a copy of the permit card issued by the Police Department, which shall be made available upon request to law enforcement. The City Council by Resolution shall establish a fee for applying for and issuing a permit card for each permittee.

f. Delivery vehicles shall not advertise any activity related to marijuana nor shall it advertise the name of the permittee.

g. Delivery of the marijuana shall be directly to the residence or business address of the qualified patient or the qualified patient's primary caregiver; deliveries to any other location are prohibited. The qualified patient or

primary caregiver must provide proof of a physician's recommendation of medical marijuana use before the permittee is authorized to make a delivery.

h. Deliveries of marijuana shall occur only between the hours of 8:00 a.m. and 6:00 p.m.

i. No permittee shall transport nor cause to be transported marijuana in excess of the limits established by the State Bureau of Medical Marijuana during the course of delivering marijuana; until the State Bureau of Medical Marijuana establishes the limit, the limit, per patient or qualified caregiver, is eight (8) ounces of dried marijuana or its marijuana product equivalent within the City.

j. All orders to be delivered shall be packaged by the names of the qualified patient or qualified patient and primary caregiver, if delivery is made to the primary caregiver, with a copy of the request for delivery with each package.

B. Non-Medical Marijuana Deliveries Prohibited. Delivery of non-medical marijuana and/or non-medical cannabis within the City is prohibited, and it shall be unlawful for any person to deliver non-medical marijuana, as specified herein and in California Business and Professions Code section 19340, within the City.

C. Mobile Dispensaries Prohibited. Mobile marijuana dispensaries are prohibited in the city. No person shall locate, operate, own, allow to be operated, or assist in the operation of any mobile marijuana dispensary within the city.

1. No person or entity shall operate or permit to be operated a marijuana dispensary in or upon any property or premises in the city. The city shall not issue, approve, or grant any permit, license, or other entitlement for the establishment or operation of a marijuana dispensary in any zoning district.

2. No person shall deliver marijuana to any location within the city from a mobile marijuana dispensary, regardless of where the mobile marijuana dispensary is located, or engage in any operation for this purpose.

3. No person shall deliver any marijuana-infused product such as baked goods, ointments, or other consumable products, to any location within the city from a mobile marijuana dispensary, regardless of where the mobile marijuana dispensary is located, or engage in any operation for this purpose.

17.70.040 Marijuana Dispensaries.

A. Marijuana Dispensaries are allowed in the C-2 (Community Commercial), C-3 (General Service Commercial and Industrial), C-H (Highway Commercial), B-P (Business Park), I-P-I (Industrial Park and/or Industrial) and MG (General Manufacturing) zones, with the issuance of a conditional use permit and development agreement, which jointly, must first be reviewed and recommended by the Planning Commission for City Council approval.

B. The City may address and require development and operational standards through conditions on the conditional use permit as it determines to be necessary or appropriate for the marijuana dispensary conditional use permit under consideration.

1. In granting a conditional use permit for a marijuana dispensary, and in addition to the findings required by section 17.66.070.D., the city shall find the following:

a. The marijuana dispensary has not generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the dispensary;

b. The marijuana dispensary has not caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct; and

c. The proposed location, size, and other development standards of the marijuana dispensary are consistent with state law and this code.

C. The City may also address and require development and operational standards through a development agreement, including fees and community enhancement efforts through the business.

D. Proximity to Schools, Child Care Centers, and Parks. It is unlawful and a public nuisance to operate a marijuana dispensary on any legal parcel or premises within six hundred (600) feet of any school, child care center, or public park. The distance feet shall be measured from the closest property line of the school, child care center, or park to the closest property line of the dispensary parcel.

E. Any structure, regardless of square footage, constructed, altered or used for the marijuana dispensary must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Director of Community Development and Chief of Police in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for marijuana dispensary.

F. Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.

G. The marijuana dispensary areas shall not be accessible or operated by anyone who could not be an authorized grower.

H. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.

I. To the extent permitted by law, any personal or medical information submitted with a marijuana dispensary permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.

J. The Planning Commission, may, in its discretion, recommend that the City Council deny any application for a marijuana dispensary, or extension thereof, where it finds, based on articulated facts, that the issuance of such permit, or extension thereof, does not demonstrate satisfaction of the minimum requirements of this chapter. In conjunction with reviewing a permit application, the applicant authorizes the Police Chief or his/her designee to conduct criminal background checks of any permit applicant and or/employee. Notwithstanding any other provision of this Code, the Planning Commission may also recommend that the City Council deny an application for a marijuana dispensary permit upon finding that during the past five years the applicant or employee has pled guilty, nolo contendere, or been convicted of crimes of moral turpitude (such as theft, fraud, or assault), or who is currently on parole or probation for the sale or distribution of a controlled substance, shall engage directly or indirectly in the management of the business nor, further, shall manage or handle the receipts and expenses of the business or be permitted in any area of the marijuana business. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to Section 17.70.080.

K. Each permit application shall be submitted with a fee to cover the reasonable cost of administering this chapter and processing the permit application. Such fee(s) shall be established by resolution of the City Council.

L. Permit non-transferable. A permit issued pursuant to this chapter shall become null and void upon the cessation of the commercial cultivation use, or upon transfer to anyone other than the original applicant.

M. Marijuana may not be cultivated, inhaled, smoked, eaten, ingested, or otherwise consumed on the property, or in the parking areas of the property.

N. A marijuana dispensary permittee shall not allow marijuana or marijuana products on the dispensary site to be visible from the public right of way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.

O. No juvenile shall be allowed on the dispensary property unless they are a qualified patient or a primary caregiver, and they are accompanied by their parent or legal guardian.

P. A dispensary shall only distribute to members that are:

1. Qualified patients with a currently valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card; or

2. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.

3. Adults twenty-one years of age and older.

Q. Unless authorized pursuant to Section 17.70.030(A), a dispensary shall not provide any form of delivery service. All distribution of non-medical marijuana must be conducted within the enclosed building areas of the dispensary property.

17.70.050 Smoking in Public Places Prohibited.

Smoking of marijuana or marijuana products is prohibited in any public place.

17.70.060 Appeals.

Any decision of the pursuant to this chapter may be appealed to the city in accordance with Section 17.66.080. Appeals must be submitted in writing, setting forth the specific grounds of the appeal, and submitted within ten (10) days of the decision. Appeals of the City Council are final.

17.70.070 Indemnification.

Every application filed or permit issued under this chapter shall contain a term or condition requiring the business, through its managers, to execute an agreement in a form approved by the city attorney whereby the marijuana business: (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from: (a) any repeal or amendment of this chapter and/or the municipal code relating to marijuana businesses, or (b) any arrest or prosecution of the business or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies and holds harmless the city and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the operation or the marijuana business.

17.70.080 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapter 8.16 or any other applicable law.

Section 4. Severability. The provisions of Chapter 17.70 are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of Chapter 17.70, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The Rio Vista City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. Effective Date and Publication. This ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish a summary of this ordinance within fifteen (15) days after its passage in an adjudicated, published newspaper of general circulation serving the City of Rio Vista residents.

I, ANNA OLEA-MOGER, CITY CLERK OF THE CITY OF RIO VISTA, HEREBY CERTIFY this ordinance was introduced at a regular meeting of the Rio Vista City Council on _____, 2017 and **PASSED AND ADOPTED** by the City Council of the City of Rio Vista at a regular meeting on _____, 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

NORMAN M. RICHARDSON, MAYOR

ATTEST:

Anna Olea-Moger, CMC, City Clerk