

**CITY OF WALNUT CREEK
ORDINANCE NO. 2216**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK
AMENDING THE MUNICIPAL CODE (ZONING ORDINANCE) TO REVISE THE
PERSONAL AND COMMERCIAL CANNABIS ACTIVITIES ORDINANCE TO PERMIT
ADULT-USE DELIVERY ONLY OPERATIONS**

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Findings.

- a. In 2015, the State of California passed three assembly bills (AB 243,266, and SB 643) which established the state-level licensing and regulatory framework for medical cannabis (MCRSA), as well as created a new California Bureau of Medical Cannabis Regulation.
- b. On November 8, 2016, Proposition 64 (Adult Use of Marijuana Act) was approved by California voters and authorized the use, possession, cultivation, and processing of cannabis and its products for non-medical (or adult-use) uses. As with the previous legislation in 2015, Proposition 64 provides local agencies the ability to ban commercial cannabis uses completely or allow those uses consistent with local ordinances. However, local agencies must allow the personal cultivation, possession, and use of cannabis and may not prohibit cultivation of up to six plants within an individual's personal residence (or accessory building to the residence).
- c. On June 15, 2017, the State passed the Medical and Adult Use of Cannabis Regulation and Safety Act (MAUCRSA), which effectively merged the adult-use statutory framework under AUMA and the medical statutory framework under MCRSA and created one uniform licensing and regulatory structure for both medical and adult-use cannabis operations. Pursuant to the new merged framework under MAUCRSA, the State began issuing both commercial medical and commercial adult-use licenses on January 1, 2018, unless expressly prohibited by local jurisdictions.
- d. MAUCRSA authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to state law.
- e. On July 10, 2018, the City of Walnut Creek ("City") adopted an ordinance adding Chapter 2; Part II; Article 14 to the Municipal Code entitled Personal and Commercial Cannabis Activities. Pursuant to the adopted ordinance, two (2) non-storefront delivery-only medical cannabis businesses are permitted to operate in the City subject to the requirements and regulations outlined in the ordinance.
- f. On October 5, 2021, the City Council directed staff to prepare an amendment to the Personal and Commercial Cannabis Activities ordinance to permit non-storefront delivery only businesses within the City to sell adult-use cannabis, as well as medical cannabis.
- g. On February 24, 2022, the Planning Commission for the City held a duly noticed public hearing to consider the proposed amendment and recommend that the City Council adopt the amendment

including some additional recommendations regarding fixed delivery addresses and value of product and cash that can be carried within transport vehicles.

- h. On Friday, April 8, 2022, a public hearing notice was posted for the proposed amendment in the East Bay Times, a newspaper of general circulation.

Section 2. CEQA Exemption.

The proposed Zoning Ordinance amendments are exempt from environmental review under Section 15061(b)(3) of the CEQA Guidelines, as they constitute minor amendments to the Zoning Code, and that any potential project enabled under the amendments will be subject to review under CEQA. The general rule exemption also applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA.

Section 3. Amending the following Sections of Walnut Creek Municipal Code; Chapter 2; Part II; Article 14 Personal and Commercial Cannabis Activities.

Sec. 10-2.3.1402. Findings.

The California Compassionate Use Act of 1996 authorizes the use of marijuana for personal medical purposes by patients pursuant to physicians' recommendations and exempts certain acts by those patients and their primary caregivers related to that personal medical use. The Medical Marijuana and Regulation and Safety Act (MMRSA later renamed MCRSA), effective January 1, 2016, established a comprehensive State licensing and regulatory framework for the cultivation, manufacturing, testing, distribution, transportation, dispensing, and delivery of medical cannabis and recognized the authority of local jurisdictions to prohibit or impose additional restrictions on any such medical cannabis activities. The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) enacted by voter approval of Proposition 64 at the November 8, 2016, Statewide election, authorized persons twenty-one (21) years of age or older to possess and use up to twenty-eight and one-half (28.5) grams of marijuana and up to eight (8) grams of concentrated cannabis, and to cultivate and possess up to six (6) living marijuana plants and the marijuana produced by those plants for personal use and created a State licensing structure for commercial adult-use marijuana operations. On June 27, 2017, the State approved the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which aimed to reconcile the existing medical marijuana statutory framework under MCRSA and the adult-use statutory framework adopted under the AUMA and created a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of cannabis, including cannabis products, and to tax the commercial growth and retail sale of cannabis.

This article aims to provide access to cannabis, while imposing strict requirements on commercial cannabis operations in order to protect the health, safety, and general welfare of the community from the potential negative consequences associated with such operations. Accordingly, this article permits a limited number of non-storefront delivery-only cannabis operations and imposes strict safety and operational requirements on such operations, including requiring these businesses to obtain operator permits and Conditional Use Permits. Further, this article imposes specific restrictions on the personal cultivation of cannabis allowed under State law in order to minimize potential safety, security, land use, and nuisance issues associated with such activity. This article also prohibits all other forms of commercial cannabis operations related to medical or recreational cannabis.

Sec. 10-2.3.1403. Purpose.

This article specifies location and operating standards for personal cannabis cultivation and specific

types of commercial cannabis businesses to ensure neighborhood compatibility, minimize potential environmental impacts, provide safe and well-regulated access to medical and adult-use cannabis and provide opportunities for economic development.

Sec. 10-2.3.1404. Definitions.

The definitions contained in Section 10-2.1.303 shall apply to the provisions of this article.

Notwithstanding the foregoing, the following definitions shall apply only to this article:

Adult-Use Cannabis. Cannabis or a cannabis product, respectively, intended to be sold for use by persons twenty-one (21) years of age or older pursuant to MAUCRSA.

Cannabis. All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin as defined in California Business and Professions Code Section 19300.5(f). "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, as amended from time to time. As used in this article, the term cannabis includes cannabis for both medical and adult-use.

Cannabis Delivery. The commercial transfer of cannabis or cannabis products to a customer pursuant to MAUCRSA or to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code.

Cannabis Delivery-Only Operations. Commercial business operations authorized by this article to be located in the City and to engage in the commercial transfer of medical and adult-use cannabis products to customers (pursuant to MAUCRSA or to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code) within the City and elsewhere in the State of California in accordance with the regulations outlined in this article and state law.

Cannabis Special Event. A temporary gathering for the sale and/or on-site consumption of cannabis, cannabis products, and/or cannabis paraphernalia. Such events may include conferences, trade shows, or meetings where such sale and/or on-site consumption is intended to take place.

Edible Cannabis Product. A cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

Indoor Personal Cultivation. The personal cultivation of up to six (6) cannabis plants that takes place completely within the interior of a private residence in accordance with the requirements of State and local law.

Marijuana. See "Cannabis."

Medicinal and Adult-Use Cannabis Regulation and Safety Act or MAUCRSA. The State of California statute governing the licensing and personal use of medical and adult-use cannabis and cannabis products.

Medical Cannabis or Medical Cannabis Product. Cannabis or a cannabis product, respectively, intended

to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Health and Safety Code Section 11362.5, by a medical cannabis patient in California who possesses a physician's recommendation.

Medicinal Cannabis. See "Medical Cannabis."

Medical Marijuana. See "Medical Cannabis."

Open-Air Outdoor Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis outdoors outside of an enclosed structure. This definition does not include cultivation of cannabis within a structure, including but not limited to a shed, hoop house, greenhouse or other accessory structure.

Operator. A natural person, persons, or entity responsible for the direction, control, management, and/or operation of any State-licensed and locally permitted non-storefront delivery-only operation.

Operator Permit. A permit issued by the City pursuant to Section 10-2.3.1401 et seq. granting a non-storefront delivery-only operation authorization to conduct business within the City.

Outdoor Personal Cultivation. The personal cultivation of up to six (6) cannabis plants that takes place outside the interior of a private residence. This definition includes open-air outdoor cultivation and personal cultivation that occurs within secure accessory structures on the grounds of private residences.

Owner. Each person or entity having an ownership interest in or a financial interest in a commercial cannabis business.

Personal Cannabis Cultivation or Personal Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of cannabis for personal medical or nonmedical adult recreational use.

Private Residence. A house, an apartment unit, a mobile home, or other similar dwelling.

Youth Center. Any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

Sec. 10-2.3.1406. Administration.

A. Operator Permit Administration. The Director of Community Development, or his or her designees, shall be responsible for administering the approval, conditional approval, denial, modification, and revocation of operator permits under this article.

B. Conditional Use Permit Administration. The Planning Commission shall be responsible for administering the approval, conditional approval, denial, modification, and revocation of Conditional Use Permits under this article.

C. Enforcement of Article. The Director of Community Development, or his or her designees, are authorized and directed to enforce all provisions of this article, pursuant to Section 10- 2.4.1502.

Sec. 10-2.3.1407. Prohibited Activities.

To the fullest extent permitted by law, the following commercial cannabis businesses and uses are prohibited in every zoning district in the City: commercial cannabis cultivation, commercial cannabis distribution, commercial cannabis manufacturing, commercial cannabis retail dispensaries, cannabis special events, and commercial cannabis testing laboratories. Notwithstanding the foregoing, commercial cannabis distributors may legally distribute medical and adult-use cannabis and medical and adult-use cannabis products to properly permitted and licensed delivery-only operations located in the City.

Sec. 10-2.3.1409. Cannabis Delivery-Only Operations Permitted.**A. Cannabis Delivery Operations Based Outside the City Permitted.**

1. **Permitted.** Cannabis delivery operations based outside of the City may deliver cannabis and cannabis products to customers and qualified patients and their caregivers within the City.

2. **Delivery Restrictions.** All deliveries must be to a fixed residential address.

3. **Operational Requirements.**

a. **Visibility.** No visual display, signage, or condition on the exterior of delivery vehicles shall indicate the types of products being transported in the delivery vehicles.

b. **Hours of Operation.** Deliveries may only be conducted between the hours of 6:00 a.m. and 10:00 p.m.

c. **Compliance with Law.** All deliveries must be conducted in accordance with all local and State laws.

d. **In-Transit Requirements.**

i. Only owners, operators, or employees of commercial cannabis businesses engaged in delivery-only operations may be present in vehicles during deliveries within the City.

ii. Delivery vehicles may only travel between the fixed locations of delivery-only operations and the residential addresses specified by customers for delivery while transporting cannabis and/or cannabis products in the City.

iii. All delivery drivers shall carry valid identification and proof of employment at a licensed delivery-only operation.

iv. All drivers shall carry an inventory log of cannabis and cannabis products being transported.

B. Non-Storefront Cannabis Delivery-Only Operations Based in Walnut Creek Permitted.

1. **Permitted.** The maximum number of non-storefront cannabis delivery-only operations that are conditionally permitted and licensed by the City to operate pursuant to this article shall be set by resolution of the City Council.

2. ***Zoning Districts.*** Delivery-only operations permitted pursuant to this article may only be located in the following zoning districts: Service Commercial (S-C) and Business Park (B-P). Deliveries may take place in all zoning districts that include residential addresses.

3. ***Distance Requirements.*** Delivery-only operations must be located a minimum of one thousand (1,000) feet from schools serving grades pre-Kindergarten through 8th grade, day care centers, youth centers, churches/religious worship facilities, and City of Walnut Creek public parks, excluding Shadelands Ranch Museum Park. Delivery-only operations must be located a minimum of one thousand five hundred (1,500) feet from schools serving grades nine (9) through twelve (12).

4. ***Delivery Restrictions.*** All deliveries must be to a fixed residential address.

5. ***Operational Requirements.***

a. **Operator Permit Required.** All delivery-only operations must obtain and maintain a valid operator permit issued by the City and comply with all conditions of that permit at all times.

b. **Conditional Use Permit Required.** All delivery-only operations must obtain and maintain a valid Conditional Use Permit pursuant to this chapter, and comply with all conditions of approval at all times.

c. **Medical and Adult-Use Cannabis.** Delivery-only operations licensed pursuant to this article may engage in the sale and delivery of adult-use and medical cannabis and adult-use and medical cannabis products to customers and qualified patients and their caregivers.

d. **Fees.** All delivery-only operations must pay all applicable fees in order to commence and continue operations.

e. **Visibility.**

- No cannabis or cannabis products may be visible from outside the delivery-only operation's fixed location or vehicles.
- No visual display, signage, or condition on the exterior of delivery-only operations' fixed locations or delivery vehicles shall indicate the types of products being stored inside the fixed location or transported in the delivery vehicles.

f. **Compliance with Law.** All delivery-only operations must be conducted in accordance with all local and State laws.

g. **Hours of Operation.** Delivery-only operations may only serve customers and conduct deliveries or receive deliveries between the hours of 6:00 a.m. and 10:00 p.m.

h. **Safety and Security Requirements.** All delivery-only operations must implement and maintain a security plan approved by the Police Department. Such plan shall include, at a minimum, the following security measures:

i. **No Public Access.** Delivery-only operations shall not permit public access to fixed locations or delivery vehicles. Only employees, operators, and owners of delivery-only operations may access

businesses' fixed locations or delivery vehicles.

i. No On-Site Sales. Delivery-only operations shall only conduct sales via delivery. On-site sales are strictly prohibited.

ii. No Cannabis Paraphernalia. No delivery-only operation shall sell or display any cannabis-related paraphernalia.

iii. Surveillance Systems. Security surveillance cameras and video recording systems shall be installed to monitor the entire interior (except bathrooms), main entrance, and exterior areas, *including* parking areas, of all delivery-only operations' fixed locations to discourage loitering, crime, and illegal or nuisance activities. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present in the fixed locations of delivery-only operations.

iv. Security Video Retention. Video from the security surveillance cameras shall be maintained for a period of not less than thirty (30) days and shall be made immediately available to City representatives upon request.

v. City Surveillance System. A delivery-only operation permitted under this article may elect to purchase all necessary equipment to integrate their video surveillance system into any comprehensive video surveillance system implemented by the City.

vi. Alarm System. Professionally and centrally monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition at the premises.

vii. Right of Inspection. All vehicles and facilities permitted pursuant to this article are subject to inspection by City personnel any time the operator is exercising privileges under an operator permit. Prior notice of an inspection is not required.

viii. Secure Storage. Each delivery-only operation shall have adequate locked storage at the fixed location for after-hours storage of cannabis and cannabis products. Cannabis shall be stored at the fixed delivery-only location in secured rooms with limited or key-card access that are completely enclosed or in a safe that is bolted to the floor.

ix. On-Site Security Guard. Delivery-only operations shall employ at least one (1) uniformed security guard present during normal business hours to include one-half (1/2) hour before and after normal business hours. The security guard shall be charged with preventing violations of the law, reporting suspicious persons, vehicles, circumstances and all criminal offenses to the Police Department. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of the State law. The sole purpose of the security guard shall be to provide for the protection and safety of the business and its authorized personnel

and said guard shall not be required to perform additional, non-security-related duties within the business. The Chief of Police reserves the right to review the number of guards and may require that the number of guards be increased as necessary.

x. Report of Criminal Activity. Delivery-only operators shall immediately report to the Police Department: (a) any criminal conduct committed by owners, operators, agents, or employees, (b) any crimes that occur at the fixed location or in a vehicle owned or used by the business, (c) any crimes against any employee, agent, operator, or owner of the business during the performance of his/her duties, and/or (d) any crimes against any customer of the business during any transaction conducted by the business.

xi. Delivery Vehicle Requirements.

a. All delivery vehicles shall be equipped with GPS tracking devices. GPS data shall be made available to the Police Department upon request.

b. All cannabis, cannabis products, and cash must be stored during transport in secure safes or lockboxes permanently affixed to the delivery vehicle.

c. All delivery vehicles must be registered with the Police Department, including the make, model, license plate, and registration numbers of such vehicles.

xii. Owner/Employee Rosters and Notice of Change. Delivery-only operations shall keep a roster on file with the Police Department with the names and birth dates of all current employees, operators, and owners of the delivery-only operation. Delivery-only operations shall provide written notice to the Community Development Director and the Police Department of any change in ownership or employees within thirty (30) days of such change.

xiii. Other Necessary Security Requirements. The Police Chief may prescribe additional safety or security measures that he or she deems reasonable and necessary in light of the nature and location of a specific operation or existing operational circumstances in order to (a) prevent the diversion of legal cannabis to the illegal market, (b) prevent the inversion of illegal cannabis into the delivery-only operation's business activities, (c) prevent robbery and theft in the course of the delivery-only operation's business activities, (d) prevent quality of life issues in connection with the delivery-only operation, including odor, litter, loitering, and noise, and (e) ensure the safety and security of the operation, its employees, surrounding properties and the general community.

i. Odor Control. All delivery-only operations shall incorporate and maintain adequate on-site odor control measures pursuant to an odor mitigation plan such that the odors as a result of storing or transport of cannabis and cannabis-related products cannot be readily detected from outside of the structure or vehicle in which the business operates.

j. In-Transit Requirements.

- i. Only owners, operators, or employees of delivery-only operations may be present in vehicles during deliveries.
 - ii. No more than the maximum amount permitted under State Law in total value of product and cash may be transported at any one time in an individual vehicle during deliveries.
 - iii. Delivery vehicles may only travel between fixed locations of delivery-only operations and the residential addresses specified by customers while transporting cannabis and/or cannabis products.
 - iv. All delivery drivers shall carry valid identification and proof of employment at a licensed delivery-only operation.
 - v. All drivers shall carry an inventory log of cannabis and cannabis products being transported.
 - vi. All vehicles must have an internal partition between the driver and any passengers from the cannabis and cannabis products that prevents access by the driver and passengers to cannabis products from inside the vehicle.
 - vii. Delivery drivers shall be trained by the delivery service provider in the process for verifying that cannabis products are delivered to qualified patients and adult-use customers and that the delivery drivers are trained in the proper usage of cannabis.
- k. Recordkeeping Requirements. Delivery-only operations shall keep the following records:
- i. All delivery vehicle maintenance records.
 - ii. All delivery vehicle ownership records.
 - iii. All shipping manifests for completed and in-transit deliveries.
 - iv. A contemporaneous inventory log.
 - v. Delivery log including location, time and delivery driver.
 - vi. Quality-assurance details for all cannabis and cannabis products stored and/or delivered by the delivery-only operation.
- l. Notification Requirements. An operator shall notify the Police Department within twenty-four (24) hours of discovering any of the following:
- i. Significant discrepancies identified during inventory. The level of significance shall be determined by the Police Chief or designee.
 - ii. The loss or unauthorized alteration of records related to cannabis, cannabis products, registered qualifying patients, primary caregivers, adult-use customers, or a delivery-only operation's agents, owners, operators, investors, partners, or employees.

iii. Any other material breach of security.

m. Owner, Operator, and Employee Requirements. In order to be eligible to obtain an operator permit from the City, the delivery-only operation must meet the following criteria:

- i. All owners, operators, partners, investors, employees, and agents must be twenty-one (21) years of age or older.
- ii. All owners, operators, partners, investors, employees, and agents must submit to a background search.
- iii. No owner, operator, investor, partner, employee, or agent of a delivery-only operation has been convicted of a felony or crime of moral turpitude nor has been found by any State or local jurisdiction to have committed a violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The Police Chief reserves the right, in his or her sole discretion, to waive this requirement in relation to violations of MAUCRSA, in the event that he or she determines that the violation of MAUCRSA was minor in nature and would not undermine the safe and effective operation of the proposed business in accordance with applicable laws.
- iv. All owners, operators, employees, security personnel, and agents must obtain a certificate of completion from the State of California Licensee Education on Alcohol and Drugs (LEAD) program.

Sec. 10-2.3.1410. Operator Permit Required.

No person shall engage in commercial cannabis activity or operate a commercial cannabis business pursuant to this article without possessing a valid operator permit from the City and without possessing all other approvals or licenses that may be required pursuant to State law and regulations.

- A. Additional permits or entitlements may be required depending on construction or improvements necessary for a building or site.
- B. The City may refuse to issue any discretionary or ministerial permit, license, variance or other entitlement, which is sought pursuant to this article, including zoning clearance for a building permit, where the property upon which the use or structure is proposed is in violation of the Walnut Creek Municipal Code, or any other local, State or Federal law.
- C. The City may require an operating agreement as a condition of receiving an operator permit. Such operating agreement shall set forth the terms and conditions under which the delivery-only business will operate, that are in addition to the requirements of the Walnut Creek Municipal Code. The terms and conditions may include, but are not limited to, the payment of fees, charges, and contributions as mutually agreed, and any such other terms which promote the public health, safety, and welfare and mitigate negative impacts of such use.
- D. No property interest, vested right, or entitlement to receive a future permit to operate a delivery-only operation shall ever inure to the benefit of such operator permit holder, as such permits are revocable. Operator permits issued pursuant to this article are specific to the owner, do not run

with the land and are not transferable.

- E. Under no circumstances will the City grant more than the number of operator permits or allow more than the number of delivery-only operations specified in the resolution of the City Council setting such number.

Sec. 10-2.3.1411. Application for Operator Permit—Form and Content.

Applicants for operator permits must submit applications to the Community Development Department. Any confidential information submitted by applicants pursuant to this section shall be marked as such. Confidential information submitted to the City may be withheld from public disclosure in accordance with the requirements of applicable law. Applications shall include, at a minimum, the following:

- A. **Applicant Contact Information.** The name, address, and telephone number of the applicant. If the applicant is a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation.
- B. **Owner Information.** All necessary information related to the business owner(s), including names, birth dates, addresses, social security numbers, criminal histories, relevant work histories, names of businesses owned or operated by the owner(s) within the last ten (10) years with a signed authorization from each such owner authorizing the City to conduct a background check to determine eligibility for a delivery-only operator permit. Qualifying private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety.
- C. **Investor/Partner Information.** If applicable, names, birth dates, addresses, social security numbers, criminal histories, and relevant work histories for all investors and/or partners of the proposed business. For purposes of this subsection, partners and investors include those individuals with a five percent (5%) or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the business is to be paid with a signed authorization from each such investor/partner authorizing the City to conduct a background check to determine eligibility for a delivery-only operator permit. Qualifying private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety.
- D. **Operator/Manager Information.** If applicable, applicants shall submit the name(s), birth date(s), addresses, social security numbers, criminal histories, and relevant work histories for any operator or manager of the business, if different than the owner(s). Qualifying private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety.
- E. **Employee Roster.** Each applicant shall submit an employee roster with the names and birth dates of each proposed employee of the operation with a signed authorization from each such employee authorizing the City to conduct a background check to determine employees' eligibility for employment at delivery-only operations licensed by the City. If the business does not have employees at the time of the application, such roster must be submitted prior to issuance of an operator permit. Qualifying private information will be exempt from disclosure to the public, pursuant to applicable law, to protect an individual's privacy interests and public health and safety. Written notice of any change to the employee roster shall be provided to the Community

Development Director and Police Department within thirty (30) days of such change.

- F. Agent for Service of Legal Notices. Applicants shall submit the name, address, and telephone number of the person authorized to accept service of legal notices.
- G. Payment of Application Fee. Applicants shall submit the application fee amount with their applications.
- H. Property Information and Owner Permission. Applicants shall submit the street address and Assessor Parcel Number (APN) number of the parcel upon which the business will be located. Applicantsshall also submit written (and notarized) authorization from the property owner and/or landlord to operate a cannabis delivery-only operation on the site.
- I. Name of Business and Operating Plan. Each application shall include the name of the proposed business and a detailed operating plan identifying the operating features of the proposed business.
- J. Safety and security plan. Safety and security plan as required under Section 10-2.3.1409(B)(5)(h).
- K. Operational Narrative. Applicants shall submit a narrative explaining how the proposed operation includes operational measures sufficient to (1) prevent the diversion of legal cannabis to the illegal market, (2) prevent the inversion of illegal cannabis into the delivery-only operation's business activities, (3) prevent robbery and theft in the course of the delivery-only operation's business activities, (4) prevent quality of life issues in connection with the delivery-only operation, including odor, litter, loitering, and noise, and (5) ensure the safety and security of the operation, its employees, surrounding properties and the general community. Applicants should specifically identify any measures that are in addition to the measures required by the City pursuant to the safety and security plan.
- L. Odor Mitigation Plan. Applicants shall submit an odor mitigation plan certified by a professional engineer or industrial hygienist that includes the following:
 - 1. Operational processes and maintenance plan, including activities to ensure the odor mitigation system remains adequate and functional.
 - 2. Odor mitigation training and operational procedures for all employees; and
- M. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.
- N. Site Plans. Each application shall include a detailed site plan identifying the layout and configuration of the proposed operation, as well as any proposed improvements to the site. The site plan shall identify all areas of the proposed site, including storage areas, and vaults.
- O. Buffer Zone. The names and addresses of all schools, churches/religious worship facilities, youth centers and day care centers and City of Walnut Creek public parks, excluding Shadelands Ranch MuseumPark, within one thousand (1,000) feet of the proposed location and the names and

addresses of all schools serving grades nine (9) through twelve (12) within one thousand five hundred (1,500) feet of the proposed location.

- P. **Public Benefits Proposal.** The applicant shall submit a list and description of any public benefits that the applicant intends to provide to the City or community in connection with the delivery-only operation's business activities and shall indicate whether or not the applicant is willing to enter into an operating agreement with the City.
- Q. **State License Information.** The type of license that the applicant is seeking from the State and status of that application.
- R. **Signed Affidavit.** The property owner and applicant, if other than the property owner, shall sign the application under penalty of perjury and shall include affidavits agreeing to abide by and conform to the conditions of the operator and Conditional Use Permits and all provisions of the Walnut Creek Municipal Code pertaining to the establishment and operation of the delivery-only operation. The affidavit(s) shall acknowledge that the approval of the operator permit, and Conditional Use Permit shall, in no way, permit any activity contrary to the Walnut Creek Municipal Code, or any activity which is in violation of any applicable laws.
- S. **Signed Indemnity Provision.** To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this article shall not become a personal liability of any public officer or employee of the City. To the maximum extent permitted by law, owners shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Walnut Creek, the Walnut Creek City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, costs, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, prosecutions for violations of State or Federal law, or judgments (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") caused, in whole or in part, by the owner's operation of a delivery-only operation in the City or associated with any action against the City to attack, set aside, void or annul any cannabis-related approvals and/or determinations. The City may elect, in its sole discretion, to participate in the defense of said action, and the owner shall reimburse the City for its reasonable legal costs and attorneys' fees. Owners shall be required to agree to the above obligations in writing and submit said writing as part of the operator permit application.

Sec. 10-2.3.1412. Action on Application for Operator Permit.

- A. Application Review and Approval Procedures.
 1. ***Solicitation of Applications.*** City will issue a notice soliciting applications for delivery-only operations. Such notice will specify when the City will begin accepting applications and the deadline for receipt of applications.
 2. ***Selection Process.*** The method for selecting the applicants that will be eligible to receive operator permits shall be set by resolution of the City Council.
 3. ***Six (6) Month Time Period to Seek Conditional Use Permit.*** An applicant has six (6) months from the selection of an application by the City to obtain a Conditional Use Permit pursuant to Section 10- 2.3.1413. If an applicant fails to obtain a Conditional Use Permit during that time period, another qualified applicant may be selected in accordance with the method outlined per

the City Council resolution and such applicant may be permitted six (6) months from the date of selection by the City as an operator to seek a Conditional Use Permit from the Planning Commission.

4. ***Site and Vehicle Inspections Required.*** If an applicant successfully obtains a Conditional Use Permit from the Planning Commission, City will conduct site and vehicle inspections to confirm compliance with the operational requirements and submitted application materials.
5. ***Operating Agreement.*** If the City elects to require an operating agreement, owners and City must successfully negotiate said operating agreement prior to issuance of operator permit.
6. ***Permit Issuance.*** The City will issue an operator permit to a selected applicant upon the occurrence of all of the following events: (a) the applicant successfully obtains a Conditional Use Permit from the Planning Commission, (b) the City inspects the applicant's proposed business site and vehicles and determines that both conform to the submitted application materials and are in compliance with all applicable rules and regulations; (c) the applicant has paid all applicable fees; and (d) the City confirms that the applicant has met all required conditions pursuant to this article.
7. ***State Licensing.*** Applicants who are granted an operator permit and Conditional Use Permit must obtain a state cannabis license prior to commencing operations. If an applicant fails to obtain a state cannabis license within six (6) months of being granted an operator permit, said operator permit shall expire and the City will select another qualified applicant in accordance with the method outlined per the City Council resolution and such applicant will be permitted to seek a Conditional Use Permit from the Planning Commission.

B. Grounds for Rejection of Applications/Revocation, Modification, or Suspension of Operator Permits. The Community Development Director, or designee, has the authority and discretion to reject, suspend, modify or revoke any application or operator permit. Applicants providing false or misleading information in the permitting process will result in rejection of the application and/or nullification or revocation of any issued permit. Grounds for rejection of an application or suspension, modification, or revocation of an operator permit include, but are not limited to:

1. Providing incomplete, late, or unresponsive applications.
2. Making false or misleading statements to the City.
3. Any owner, operator, investor, partner, employee, or agent has been convicted of a felony, crime of moral turpitude or has been found by any State or local jurisdiction to have violated the provisions of MAUCRSA.
4. Any owner or operator has had a cannabis-related license or approval revoked from another jurisdiction.
5. Failure to comply with any provisions of this article, the Zoning Code, state law, or any other applicable laws or regulations.
6. Unpaid fees, fines, taxes, or administrative penalties.
7. Facts or circumstances exist which indicate that the operation does or would very likely

constitute a threat to public health, safety and/or welfare.

8. Failure to obtain the necessary planning approvals or revocation of said planning approval in accordance with this article and the Zoning Code.
9. The operation as proposed would violate any provision of state or local laws or regulations.
10. Failure to implement and maintain a safety and security plan in conformance with Section 10-2.3.1409(B)(5)(h).
11. The applicant has engaged in unlawful, fraudulent, unfair or deceptive business acts or practices.
12. The applicant's state license for the commercial cannabis operations is suspended or revoked. The City shall not reinstate the operator permit until documentation is received showing that the state license has been reinstated or reissued. It shall be within the City's sole discretion whether the City reinstates any permit after suspension or revocation of a state license.
13. State law permitting the use for which the permit was issued is amended or repealed resulting in the prohibition of such use, or the City receives credible information that the Federal government will commence enforcement measures against such businesses and/or local governments that permit such uses.

Sec. 10-2.3.1413. Conditional Use Permit Required.

No person, group, business, or other entity shall establish a non-storefront cannabis delivery-only operation in the City or substantially change the mode or character of operation of an existing non-storefront cannabis delivery-only operation in the City without first obtaining or modifying, as the case maybe, a Conditional Use Permit in the manner provided by this article.

Sec. 10-2.3.1416. Conditional Use Permit Conditions of Approval.

The Planning Commission may, in approving, conditionally approving, or modifying the Conditional Use Permit of a delivery-only operation, impose conditions that it deems reasonably necessary or desirable to ensure that the use authorized by the Conditional Use Permit will be established, operated, and maintained in accordance with the findings required by Section 10-2.3.1415, the Zoning Ordinance, the Municipal Code, and other applicable provisions of law. Such conditions may address any factors relating to the establishment, operation, or maintenance of the proposed use, including, but not limited to, the following:

- A. Hours and days of operation.
- B. Adequacy of loading and parking areas for delivery vehicles.
- C. Adequacy of security provisions to assure safety of employees on the site, as well as users of adjacent sites, including, but not limited to, lighting, alarm systems, security personnel, and the appropriate type and placement of landscape materials.
- D. A requirement that the ownership or management of a delivery-only operation take reasonable steps to assure the safe conduct of its operation and to timely respond and work cooperatively with the Community Development Department and Police Department about problems related to the operation

or management of the establishment. (§3, Ord. 2183, eff. 9/8/18)

Sec. 10-2.3.1417. Appeals.

A. Operator Permit Appeals. A decision by the Community Development Director or designee on the rejection of a delivery-only operation operator permit application or issuance, suspension, modification, or revocation of an operator permit is appealable to the City Manager or designee in accordance with the administrative appeal procedures promulgated by the City Manager.

B. Conditional Use Permit Appeals. A decision by the Planning Commission regarding a Conditional Use Permit for a delivery-only operation may be appealed to the City Council as provided by Article 5 of Part IV of the Zoning Ordinance.

Sec. 10-2.3.1420. Violations and Penalties.

A. It shall be unlawful and constitute a public nuisance for any person to engage in activities prohibited by this article, including operating a non-storefront delivery-only business, or cultivating cannabis for personal use in violation of any provision of this article.

B. A person who violates, causes, or permits another person or entity to violate any provision of this article shall be subject to the enforcement provisions of Article 15 of Part IV of the Zoning Ordinance and Chapter 6 of Title 1.

Section 4. Revising Commercial Use Classifications.

Section 10-2.1.403(B) of the Walnut Creek Municipal Code is hereby amended to revise the following sub-classifications. The City Clerk is hereby authorized and directed to renumber the entire amended section sequentially.

- a. **NON-STOREFRONT CANNABIS DELIVERY-ONLY OPERATION.** A commercial operation that is closed to the public but delivers medical and/or adult-use Cannabis and/or medical and/or adult-use Cannabis products as part of retail sale transaction to customers at fixed locations in accordance with state law. No on-site sales, nor public access to commercial facilities or delivery vehicles is permitted.

Section 5. Amending Land Use Tables (Commercial Use Classifications)

1. Sections 10-2.2.102.B (R District), 10-2.2.202.B (D-3 District), 10-2.2.302.B (M District), 10-2.2.402.B (M-H-D District), 10-2.2.506.B (H-P-D District), 10-2.2.602.B (P-R District), 10- 2.2.702.B (C-R District), 10-2.2.802.B (O-C District), 10-2.2.903.B (M-U District), 10-2.2.1002.B (A-S District), 10-2.2.1302.B (C-C District), 10-2.2.1402.B (O-S-R District), 10-2.2.1502.B (C-F District), 10-2.2.1602.B (HO P-D District), 10-2.2.2002.B (SFH-PDI District), 10-2.2.2102.B (MU-C District), and 10-2.2.2202.B (MU-R District) of the Walnut Creek Municipal Code are hereby amended to read as follows. The City Clerk is hereby authorized and directed to renumber the entire amended section sequentially.

Commercial Cannabis Business		
------------------------------	--	--

a. Commercial Cannabis Cultivation		
b. Commercial Cannabis-Distribution		
e. Commercial Cannabis-Manufacturing		
d. Commercial Cannabis Retail-Dispensary		
1. With Cannabis Delivery		
e. Non-Storefront Delivery Only-Operation		
f. Commercial Cannabis Testing-Laboratory		

2. Section 10.2.2.1102.B (S-C District) of the Walnut Creek Municipal Code is hereby amended to read as follows. The City Clerk is hereby authorized and directed to renumber the entire amended

Commercial Cannabis Business		
a. Commercial Cannabis Cultivation		
b. Commercial Cannabis-Distribution		
e. Commercial Cannabis-Manufacturing		
d. Commercial Cannabis Retail-Dispensary		
1. With Cannabis Delivery		
e. Non-Storefront Delivery Only Operation	L(21)	
f. Commercial Cannabis Testing-Laboratory		

section sequentially

3. Section 10-2.2.1202.B (B-P District) of the Walnut Creek Municipal Code is hereby amended to read as follows. The City Clerk is hereby authorized and directed to renumber the entire amended section sequentially.

Commercial Cannabis Business		
g. Commercial Cannabis-Cultivation		
h. Commercial Cannabis-Distribution		

i. Commercial Cannabis Manufacturing		
j. Commercial Cannabis Retail Dispensary		
1. With Cannabis Delivery		
k. Non Storefront Delivery Only Operation	L(12)	
l. Commercial Cannabis Testing Laboratory		

Section 6. Effective date.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective on the 60th day after its adoption.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 3rd day of May 2022 by the following called vote:

AYES: Councilmembers: Darling, Haskew, Wilk, Silva, Mayor Francois

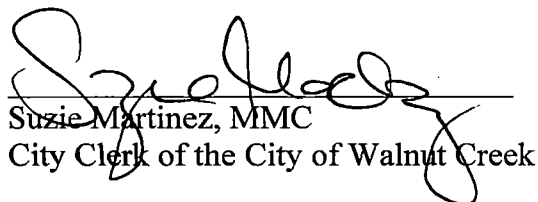
NOES: Councilmembers: None

ABSENT: Councilmembers: None



Matt Francois
Mayor of the City of Walnut Creek

Attest:



Suzie Martinez, MMC
City Clerk of the City of Walnut Creek