

ORDINANCE NO. 2023-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA APPROVING ZONING TEXT AMENDMENT NO. 2023-02, ADDING TO THE VISALIA MUNICIPAL CODE CHAPTER 5.66 (REGULATIONS AND REQUIREMENTS FOR CANNABIS BUSINESSES PERMITTED TO OPERATE UNDER CALIFORNIA STATE LAW), AMENDING CHAPTER 8.64 (PUBLIC USE/CONSUMPTION OF MEDICAL MARIJUANA), AMENDING CHAPTER 17.25 (COMMERCIAL, MIXED USE, OFFICE, AND INDUSTRIAL ZONES USE MATRIX), AND ADDING SECTION 17.32.167 (DELIVERY ONLY MEDICAL MARIJUANA RETAIL) IN ORDER TO ADDRESS UPCOMING STATE MANDATED CHANGES AS A RESULT OF THE PASSAGE OF SB 1186, THE "MEDICINAL CANNABIS PATIENTS' RIGHT OF ACCESS ACT", AND ESTABLISH OBJECTIVE STANDARDS FOR PERMITTING DELIVERY ONLY MEDICAL MARIJUANA RETAIL ESTABLISHMENTS WITHIN THE CITY OF VISALIA.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:**

**Section 1. Findings.** The City Council hereby finds the following in support of these municipal code additions and modifications:

- A. In 1996 California voters approved Proposition 215, that legalized, under state not federal law, the possession and use of cannabis for medical purposes by individuals under designated circumstances; and
- B. In 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act, which established a system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana. However, Proposition 64 expressly allowed local agencies, such as the City of Visalia to decide whether to allow commercial marijuana activities within the local agency jurisdiction; and
- C. In response to Proposition 64 and other state laws the City of Visalia approved ordinances that did not allow commercial cannabis activities, regardless of whether the cannabis was intended for medicinal or recreational use, City ordinances specifically allow an individual to use, possess limited quantities of, or cultivate marijuana (up to six plants) for personal use in compliance with state, not federal, law; and
- D. In 2022, SB 1186, which becomes effective on January 1, 2024, the Medicinal Cannabis Patients' Right of Access Act was signed into law, this statute decreases the prior allowances for local agency control over cannabis business by stating cities in California cannot adopt or enforce regulations that prohibit the retail sale by delivery of medicinal cannabis, although zoning and business license regulations of such businesses are allowed by state law; and
- E. The City of Visalia has determined that reasonable zoning regulations, business licensing requirements, and modifications of current ordinances to comply with SB 1186 are necessary for the health, safety, and welfare of the citizens of Visalia.
- F. Allowing delivery only (non-storefront) medicinal cannabis to be located in industrial zones, even with the proposed buffer zone, within the City of Visalia is consistent other types of delivery businesses and allows interested parties a large area within the City that is available for use, so the number of such sites is not restricted; and
- G. Not allowing this type of cannabis related business activity in commercial service zones avoids potential secondary impacts, such as encouraging youth smoking, drug use,

concerns over criminal activities from cannabis businesses, to other land uses that are more often located near commercial service zones compared to industrial zones, in addition the City Council finds that avoidance of these secondary impacts can be established by the requirement of a buffer zone between locations in industrial zoned areas and school sites within 500 feet; and

- H. City Council finds that requiring delivery only medicinal cannabis businesses to be non-storefront/delivery only, not cultivate marijuana onsite, provide a security plan, provide fencing, submit background inspections, submit to vehicle inspections, meet state mandated requirements for medicinal cannabis businesses, will also avoid potential secondary impacts, and provide for the safety and wellbeing of both the business applicant and surrounding community; and
- I. City Council finds that parking and signage requirements are consistent with similar uses within the City; and
- J. The Planning Commission of the City of Visalia, after duly published notice, held a public hearing before said Commission on October 9, 2023; and
- K. The Planning Commission of the City of Visalia considered the Zone Text Amendment in accordance with Section 17.44.070 of the Zoning Ordinance of the City of Visalia and on the evidence contained in the staff report and testimony presented at the public hearing; and
- L. The City Council of the City of Visalia, after duly published notice, held a public hearing before said City Council on November 6, 2023, and introduced said Ordinance for first reading on that date.
- M. The proposed Zoning Text Amendment is consistent with the intent of the General Plan, and Zoning Ordinance, and is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
- N. That the proposed Zoning Text Amendment is not inconsistent with any other Element of the General Plan.
- O. The ordinance additions and modifications establish objective standards to adequately address operational standards for delivery only medical marijuana retail establishments, consistent with the stated goals of the City of Visalia General Plan and Zoning Ordinance to preserve and promote the public health, safety, and welfare of the city while also adhering to SB1186, which prohibits local agencies from enforcing any local regulations that prohibit the retail sale by delivery of medicinal cannabis.

**Section 2. Business License Requirements for Delivery Only Medicinal Cannabis.** Chapter 5.66, setting forth regulations and requirements for cannabis businesses permitted under state law, is hereby added to address upcoming state mandated changes as a result of the passage of SB 1186, and establish objective standards for permitting delivery only medical marijuana retail establishments within the City of Visalia. This new chapter is set forth in italics below:

***Chapter 5.66 Regulations and Requirements for Cannabis Businesses Permitted to Operate Under California State Law***

***5.66.010 - Purpose and Intent.***

*It is the purpose of this chapter to permit and regulate delivery only medical marijuana retail businesses, which the City of Visalia has been mandated by the Medicinal Cannabis Patients'*

*Right of Access Act, Senate Bill 1186, passed in 2022 to allow within city boundaries. These types of businesses will be permitted as provided herein. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the number of medicinal cannabis businesses authorized to deliver medicinal cannabis in the city, the operating hours of medicinal cannabis businesses, the number or frequency of sales by delivery of medicinal cannabis, the types or quantities of medicinal cannabis authorized to be sold by delivery, or the establishment of physical premises from which retail sale by delivery of medicinal cannabis within the city is conducted by a licensed non-storefront retailer.*

**5.66.020 – Definitions.**

*All definitions set forth in Health and Safety Code Sections 11362.5 and 11362.7 et seq. and Business and Professions Code Section 26001, as may be amended, including but not limited to the terms “person with an identification card”, “primary caregiver”, “qualified patient”, “customer,” “delivery,” “license,” “manufacture,” and “identification card” shall apply under this chapter in addition to the definitions set forth as follows:*

*“Commercial marijuana activity” shall mean the same as “commercial cannabis activity” under Business and Professions Code Section 26001(l), which includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of marijuana and marijuana products as provided in Business and Professions Code Division 10, regulating the cultivation, distribution, transportation, storage, manufacturing, processing, and sale of marijuana and marijuana products for medical or non-medical purposes, but shall not refer specifically to “delivery only medical marijuana retail” as defined separately below or the deliveries of marijuana within Visalia when the sales, based on location of the seller, were made in jurisdictions that allow sales of cannabis by delivery and the delivery vehicles are in compliance with applicable state regulations and those of the permitting jurisdiction.*

*“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.*

*“Cultivation of medical marijuana” means the cultivation of marijuana for medical purposes as defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq.*

*“Delivery” means the commercial transfer of marijuana or marijuana products to a customer and includes the use of a retailer of any technology platform owned and controlled by the retailer.*

*“Delivery only medical marijuana retail” shall refer to a facility or location operated by a state licensed nonstorefront retailer possessing a current M-license and Type 9 license from CA Department of Cannabis Control where medical marijuana is made available, and/or distributed by method of delivery only, with no on-site customer services of any kind, to medicinal cannabis patients, as defined in Section 11362.7 of the Health and Safety Code, who possess a physician’s recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.*

*“Marijuana” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include industrial hemp as that term is defined in Health and Safety Code Section 11018.5 or the weight of any*

*other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.*

*“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.*

*“Medical Marijuana” means the use of marijuana for the purposes set forth in the Compassionate Use Act and the Medical Marijuana Program Act, which was adopted by California voters as Proposition 215 in 1996, found in California Health and Safety Code Sections 11362.5 and 11362.7 et seq.*

*“Private residence” means a house, an apartment unit, a mobile home, or similar dwelling.*

*“Sell,” “sale,” and “to sell” includes any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.*

#### **5.66.030 – Application requirements**

*In addition to adhering to the general business license provisions as identified in Chapter 5.04, any applicant for a required city business license must also adhere to the following business regulations:*

- A. A site plan of the proposed business would be required. The site plan must meet the same requirements as other commercial or retail businesses within the City of Visalia under Chapter 17.28 of the Visalia Municipal Code and demonstrate compliance with Visalia Municipal Code 17.32.167.*
- B. Copies of the applicant’s current M-license and Type 9 license from the CA Department of Cannabis Control required.*
- C. The name and address of the owner and lessor of the real property upon or in which the business is to be operated. If the applicant is not the legal owner of the property, a notarized acknowledgment from the owner of the property that a delivery only medical marijuana retail business will be located on his or her property is required for each permit application.*
- D. Any person, association, partnership, or corporation desiring to operate a delivery only medical marijuana retail business, that will own five percent (5%) or more of the business or operate a delivery vehicle must submit an application to the chief of police for an investigation of the applicant’s background and history. A fee to recover costs of the background check must accompany the submission of each application. An annual nonrefundable renewal fee may also be charged to defray associated costs of investigation, inspection, and enforcement.*
  - 1. Each applicant for a background check must submit the following information:*
    - i. The full true name and any other names used by the applicant.*
    - ii. The present address and telephone number of the applicant.*
    - iii. Driver’s license number and Social Security number.*
    - iv. The proposed address of the business.*

- v. *Each residence and business address of the applicant for the three (3) years immediately preceding the date of the application, and the inclusive dates for such address.*
- vi. *Written proof that the applicant is at least twenty-one (21) years of age.*
- vii. *Applicant's height, weight, and color of eyes and hair.*
- viii. *Two (2) photographs of the applicant at least two (2) inches by two (2) inches taken within four (4) months preceding the date of the application.*
- ix. *Applicant's business, occupation, and employment history for the five (5) years immediately preceding the date of application.*
- x. *The business license or permit history of the applicant, including whether such applicant has ever had any license or permit issued by any agency or board, city, county, or state revoked or suspended.*
- xi. *All criminal conviction of applicant, and a statement of the dates and places of such convictions.*
- xii. *If the applicant is a corporation, the name of the corporation must be set forth exactly as shown in the articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock of the corporation. If the applicant is a partnership, the application must set forth the name and residence address of each of the partners, including the limited partners. If the applicant is a limited partnership, it must furnish a copy of its certificate of limited partnership filed with the county clerk. If one (1) or more partners is a corporation, the provisions of this section pertaining to corporate applicants will apply. The applicant corporation or partnership must designate one (1) of its officers or general partners to act as its responsible managing officer. Such person must complete and sign all application forms required of any individual applicant under this chapter, but only one (1) application fee will be charged.*
- xiii. *The chief of police may require the applicant to furnish fingerprints when needed for the purpose of verifying identification.*
- xiv. *Such other identification and information as may be required by the chief of police in order to verify the information to be included in the application.*
- xv. *The city is allowed a reasonable time, not to exceed sixty (60) days, in which to investigate the information on the application. During the investigation of the background information, a city representative including, without limitation, a member of the police department, fire department, building and safety division, planning division, or any authorized representative thereof, may inspect, with or without notice during regular business hours, the proposed place of business to determine whether it conforms to the requirements of this chapter and Chapter 17.32.167. Upon completion of the inspection, the city representative must inform the chief of police in writing of the findings of the inspection. Background clearance will be issued, within sixty (60) days of receipt of the application, to any applicant who has furnished all of the information required by this section in the application for such license, provided all of the following apply:*
  - 1. *The applicant(s) has not made a materially false statement in the application;*
  - 2. *The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, or holders of five percent (5%) or more of the corporation's stock, has not, within five (5) years immediately preceding the date of the filing of the*

*application been convicted in a court of competent jurisdiction of any of the following offenses:*

- a. *Any offense relating to possession, cultivation, manufacture, sale, or distribution of a controlled substance, with the exception of cannabis related offenses when the cannabis was possessed, cultivated, manufactured, sold, or distributed in compliance with State and/or the relevant local jurisdiction, as applicable;*
  - b. *Any offense relating to possession, cultivation, manufacture, sale, or distribution of cannabis that is illegal under State and/or a local jurisdiction, as applicable;*
  - c. *Any offense involving the use of force or violence upon the person of another;*
  - d. *Any offense involving theft, fraud, dishonesty or deceit;*
  - e. *Sales of cannabis to a minor or use of a minor to distribute cannabis;*
  - f. *Any offense relating to the physical or sexual abuse of a minor;*
  - g. *Any offense relating to a failure to collect (any portion of), report, timely report, and/or remit (any portion of) a cannabis-related tax to the State or any other local jurisdiction.*
3. *The applicant(s) are at least twenty-one (21) years of age;*
  4. *The applicant(s) has not had a CA Dept of Cannabis Control license revoked, not renewed, or suspended within seven (7) years immediately preceding the date of the filing of the application, unless the applicant(s) can show a material change in circumstances or that mitigating circumstances exist since the revocation or suspension.*
- E. *A security plan reviewed and approved by the Visalia Police Department is required prior to the business being allowed to operate. See specific security plan requirements described in Chapter 5.66.050 of this ordinance.*
- F. *Indemnification. The applicant or its legal representative shall:*
1. *Indemnify and hold the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of Federal law associated with the operation of the commercial cannabis activity; defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of an entitlement for or the operation of the commercial cannabis activity; reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or Federal enforcement action) related to the City's approval of an entitlement for or the operation of the commercial cannabis activity.*
  2. *Maintain commercial general liability and auto insurance in the amounts required by the California Department of Cannabis Control for a cannabis dispensary, provide the City of Visalia with proof of such insurance in a form acceptable to the City, and name the City as an additionally insured.*
- G. *Before operating, the establishment's owners must comply with all applicable codes adopted by the city, including, without limitation, the building, electrical, and plumbing codes.*

#### **5.66.050 - Security Plans**

*Security plans shall comply with the following minimum standards:*

- A. The applicant shall provide adequate security and lighting on site to ensure the safety of persons and protect the premises from theft at all times in conformance with the security plan submitted with the application.*
- B. Any security guards employed by the applicant shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. The applicant's security guards shall not possess firearms.*
- C. A video surveillance system, as approved by the Visalia Police Department, shall continuously surveil the building exterior, entrances and parking area of the site, as well as areas of the interior including product storage area but excepting any restroom(s), twenty-four (24) hours a day. Footage from such surveillance shall be retained for at least forty-five (45) days.*
- D. There shall be no sales of alcohol or tobacco products, and no on-site consumption of alcohol, tobacco products, or cannabis products by employees.*
- E. Entry into the premises by the general public is prohibited.*
- F. Community Relations Liaisons.*
  - 1. The applicant shall provide law enforcement with the name and phone number of an on-site community relations liaison to notify if there are operational problems with the establishment.*
  - 2. The applicant shall have a community relations liaison designated at all times, who shall be twenty-one (21) years of age or older.*
  - 3. The liaison shall be responsible for receiving and responding to all concerns and complaints made to the City regarding the cannabis business and for making a good faith attempt to promptly address all concerns and resolve all complaints.*
  - 4. The liaison shall respond by phone or e-mail within forty-eight (48) hours of any complaint(s) or concern(s) reported by a City official.*
  - 5. The liaison's name and contact information shall be provided to the City Manager prior to operation of the business and within forty-eight (48) hours of a designation of a new liaison.*

*City Code compliance officers, Building Safety Inspectors, Police Department or Fire Department staff requesting admission for the purpose of determining compliance with this article shall be given unrestricted access and allowed entry during all business hours. These inspecting authorities shall also have unimpeded access to inspect all on-site locations, records, reports, documents, points of sale, product, surveillance footage, and any other access deemed necessary to ensure compliance with this chapter.*

#### **5.66.060 – Delivery Vehicles**

- A. Delivery vehicles must be inspected by City and obtain an operating permit prior to use and must meet all state requirements for cannabis delivery vehicles.*
- B. Vehicles used in the delivery process must be unmarked without any designation or logo that identifies the vehicle as a cannabis delivery vehicle.*
- C. Business shall obtain and maintain in full force and effect automotive liability insurance policy with appropriate coverage.*

- D. Business shall obtain and maintain in full force and effect at all times while an active city business license is in effect workers' compensation insurance as required by law.*
- E. The amount of cannabis allowed in each delivery vehicle shall be in compliance with state law.*
- F. Owners are required to maintain compliance with all applicable CA Department of Cannabis Control regulations pertaining to delivery vehicles.*

**5.66.080 – Odor Control**

- A. The business is required to prevent the smell of marijuana from the business from being detected on adjacent private properties, the public right of way, or within any other unit located within the same building as the business. This requires an odor control plan to be prepared and submitted to the City for approval.*
- B. The odor control plan may include installation of an odor absorbing ventilation and exhaust system or any other equipment the city determines has the same or better effectiveness, such as:
  - 1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally,*
  - 2. An air system that creates negative air pressure between the premises' interior and exterior so that the odors generated inside the premises are not detectable outside the premises.**

**5.66.090 – Performance standards**

*All delivery only medical marijuana retail businesses shall meet the following ongoing performance standards:*

- A. Meet all requirements stated in Visalia Municipal Code Chapter 8.64.055.*
- B. The applicant shall have a responsible person on the premises to act as manager and supervise employees at all times during business hours.*
- C. A business shall not make a physical change, alteration, or modification of the permitted premises without the prior written approval of the City. If a permitted premises is to be changed, modified, or altered, the business is responsible for applying for and securing all necessary City approvals, project plan approvals, and permits.*
- D. Maintaining a valid M-license and Type 9 license in good standing from the CA Department of Cannabis Control required.*
- E. Continued adherence to the security plan.*
- F. The business shall comply with the provisions of state and local laws, including other city laws governing the regulation and/or prohibition of commercial cannabis businesses.*
- G. Entry into the premises by the general public is prohibited. All sales are to be made by delivery offsite only.*
- H. Effective implementation of the odor control plan.*



- I. *All new employees, managers, or owners, prior to hiring, must submit to a comprehensive background check by the business. The business must ensure that each potential party meets similar standards to pass background check as stated in the Application Requirements in Chapter 5.66.030, subsection D.*
  1. *A party should not have any offenses relating to:*
    - i. *Possession, cultivation, manufacture, sale, or distribution of a controlled substance, with the exception of cannabis related offenses when the cannabis was possessed, cultivated, manufactured, sold, or distributed in compliance with State and/or the relevant local jurisdiction, as applicable;*
    - ii. *Possession, cultivation, manufacture, sale, or distribution of cannabis that is illegal under State and/or a local jurisdiction, as applicable;*
    - iii. *Any offense involving the use of force or violence upon the person of another;*
    - iv. *Any offense involving theft, fraud, dishonesty or deceit;*
    - v. *Sales of cannabis to a minor or use of a minor to distribute cannabis;*
    - vi. *Any offense relating to the physical or sexual abuse of a minor;*
    - vii. *Any offense relating to a failure to collect (any portion of), report, timely report, and/or remit (any portion of) a cannabis-related tax to the State or any other local jurisdiction.*
  2. *For each potential party, before beginning employment, the business must collect a sworn affidavit attesting that a comprehensive background check was conducted in conformance with this chapter; and the potential party meets the standards to pass this background check.*

#### **5.66.100 – Public Nuisance Abatement**

*Any business operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance. The City is authorized, in addition to or in lieu of any other legal or criminal proceedings, to commence an action or proceeding for abatement, removal or enjoinder of such business in the manner provided by law. The City may seek a court order to grant such relief to abate or remove such business and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter.*

#### **5.66.110 Revocation.**

- A. *Grounds for revocation. The City may revoke approvals issued to the business to operate in the city for one (1) or more of the following grounds:*
  1. *Fraud or deceit. That the applicant practiced fraud or deceit in obtaining an approval to operate business in the city;*
  2. *Violation of chapter. That the business owner, operator, or its employee violated a provision or provisions of this chapter;*
  3. *Criminal conviction. That the business owner, operator, or its employee has been convicted in a court of competent jurisdiction of any offense described in this chapter;*
  4. *Improperly maintained facilities. That the facilities and operations of the business are not kept in compliance with this chapter and that the owner or operator has failed to promptly remedy any deficiency of which they have been notified. For purposes of this subsection, "notice" means notice given personally, or by leaving notice at the business premises, or by first class mail, postage prepaid, to the address designated by the business in accordance with this chapter;*
  5. *Error. That the approval was issued in error;*

6. *Civil penalties or administrative citations. Assessment of three (3) or more civil penalties or administrative citations as provided by this chapter during any six (6) month period; or*
7. *Prohibited conduct. A business owner, operator, or its employee has been found to have engaged in prohibited conduct in violation of this chapter.*
8. *Notice of revocation. Upon a determination on the grounds to revoke an approval under this chapter, the City must cause a notice of revocation to be mailed by first class, postage prepaid mail, to the address designated by the business pursuant to this chapter.*

#### **5.66.120 Enforcement and penalties.**

*A. Any person violating any provision of this chapter is liable in a civil action brought by the City for an amount up to \$500 per violation. Such person is also liable for reasonable attorneys' fees and costs incurred by the city attorney in any civil proceeding filed to enforce this chapter. Each day that a violation continues may be considered a new and subsequent offense.*

*B. Alternatively the city may choose to enforce violations through the administrative code enforcement process described in Chapter 1.13 of the Visalia Municipal Code, with violations being punishable with a \$100 fine for the first violation, a \$200 fine for the second violation, and a \$500 fine for the third and subsequent violations. Each day that a violation continues may be considered a new and subsequent offense.*

*C. Enforcing this chapter through civil action may be filed as an alternative to criminal enforcement. Civil enforcement does not require the violation to be knowing or willful. A civil or administrative action cannot be filed if the person is being criminally prosecuted.*

*D. The City may settle any civil enforcement before or after to the filing of a civil action by imposing a civil penalty in an amount not exceeding the potential civil liability, including attorneys' fees, set forth in this section. If such civil penalty is paid in full, the City can agree not to file civil or criminal actions or, if action has already been filed, may dismiss such action. Imposition of all civil penalties is public record.*

#### **5.66.130 Appeal.**

*After denial of an application for a business license, or after denial of renewal of a business license, or suspension or revocation of a business license, the applicant or person to whom the business license was granted may appeal the decision to the city manager, or designee, by filing a written notice with the city clerk within ten (10) business days from the receipt of the notice of denial. The city manager or representative shall hold a hearing on the appeal within thirty (30) business days from the receipt of the notice by the city clerk. The decision of the city manager, or designee, following the hearing shall be final and conclusive. There is no appeal to the City Council. If the denial, suspension, or revocation is affirmed on review the applicant or licensee may seek judicial review of such administrative action pursuant to California Code of Civil Procedure § 1094.8. The time for filing such action is governed by California Code of Civil Procedure § 1094.8.*

**Section 3. Modifications to Current Medical Marijuana Ordinances.** The City Council hereby finds that amendments are required to current municipal codes regulating medical marijuana in order to comply with SB 1186. The following amendments are to be made to Visalia Municipal Code sections 8.64.010, 8.64.020, 8.64.050, with additional language in italics, deleted language in strikethrough, and new section 8.64.055 shall be added:

#### **8.64.010 Purpose and intent.**

It is the purpose of this chapter to promote the health, safety, morals, general welfare and enjoyment of private property of the residents within the city by restricting the public use and consumption of marijuana; prohibiting, to the maximum extent permitted under the state law, the commercial cultivation, distribution, transportation, storage, manufacturing, processing, and sale of marijuana within the City of Visalia; and by regulating the individual cultivation of marijuana. This chapter is intended to prohibit these activities to the maximum extent possible by a local agency as authorized under the state law, specifically the Compassionate Use Act, Proposition 215, passed in 1996, and the Adult Use of Marijuana Act, Proposition 64, passed in 2016, and the Medicinal Cannabis Patients' Right of Access Act, Senate Bill 1186, passed in 2022.

#### **8.64.020 Definitions.**

"Commercial marijuana activity" shall mean the same as "commercial cannabis activity" under Business and Professions Code Section ~~26004(k)~~ 26001(l), which includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of marijuana and marijuana products as provided in Business and Professions Code Division 10, regulating the cultivation, distribution, transportation, storage, manufacturing, processing, and sale of marijuana and marijuana products for medical or non-medical purposes, *but shall not refer specifically to "delivery only medical marijuana retail" as defined separately below or the deliveries of marijuana within Visalia when the sales, based on location of the seller, were made in jurisdictions that allow sales of cannabis by delivery and the delivery vehicles are in compliance with applicable state regulations and those of the permitting jurisdiction.*

*"Delivery only medical marijuana retail" shall refer to a facility or location operated by a state licensed non-storefront retailer possessing a current M-license and Type 9 license from CA Department of Cannabis Control where medical marijuana is made available, and/or distributed by method of delivery only, with no on-site customer services of any kind, to medicinal cannabis patients, as defined in Section 11362.7 of the Health and Safety Code, who possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.*

#### **~~8.64.050 Medical marijuana dispensaries and c~~ Commercial marijuana activity prohibited.**

~~—A. A medical marijuana dispensary as defined in subsection B. of this section may not be established within the City of Visalia, and no permit of any type shall be issued therefor. Notwithstanding Section 17.02.110 of the Visalia Municipal Code, in no event shall a medical marijuana dispensary as defined in subsection B. of this section be considered a permitted or conditionally permitted use in any land use zoning district. This section shall not affect the right to possess, use or cultivate marijuana for medicinal purposes as is presently authorized or prohibited by the laws of the State of California as set forth in the Health and Safety Code, Penal Code, or other state law, or by any federal law, provided such possession, use or cultivation otherwise complies with any applicable provisions of the Visalia Municipal Code.~~

~~—B. A medical marijuana dispensary is any facility or location, whether fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or to three or more persons within the following categories: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.~~

A. Commercial marijuana activities are prohibited within the City of Visalia *with the exception of:*

1. *Deliveries of marijuana within Visalia when the sales, based on location of the seller, were made in jurisdictions that allow sales of cannabis by delivery and the delivery vehicles are in compliance with applicable state regulations and those of the permitting jurisdiction.*
2. *Delivery only medical marijuana retail establishments that meet reasonable zoning restrictions and development and operational standards as identified in Chapter 8.64.055, Chapter 5.66 and Chapter 17.32.167.*

~~B. Delivery of marijuana is prohibited within the city regardless of whether the delivery is initiated within or outside of the city, and regardless of whether a technology platform is used for delivery by a dispensary. This subsection does not apply to delivery services that are using public roads to travel through the City of Visalia as permitted under state law, although such delivery services must comply with all other state laws and local ordinances as applicable.~~

**8.64.055 Delivery only medical marijuana retail.**

*A. As authorized by the Medicinal Cannabis Patients' Right of Access Act, California Senate Bill 1186, passed in 2022, a delivery only medical marijuana retail dispensary as defined in subsection B., and developed and operated in accordance with the development and operational standards as defined in Chapter 5.66 and Chapter 17.32.167 may be established within the City of Visalia. This section shall not affect the right to possess, use or cultivate marijuana for medicinal purposes as is presently authorized or prohibited by the laws of the State of California as set forth in the Health and Safety Code, Penal Code, or other state law, or by any federal law, provided such possession, use or cultivation otherwise complies with any applicable provisions of the Visalia Municipal Code.*

*B. A delivery only medical marijuana retail dispensary is any facility or location operated by a state licensed non-storefront retailer possessing a current M-license and Type 9 license from CA Department of Cannabis Control where medical marijuana is made available, and/or distributed by method of delivery only, with no on-site customer services of any kind, to medicinal cannabis patients, as defined in Section 11362.7 of the Health and Safety Code, who possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2, or a qualified patient or primary caregiver for a qualified patient issued a valid identification card pursuant to Section 11362.71 of the Health and Safety Code.*

**Section 4. Modifications to Visalia Municipal Code Chapter 17.25.** Zoning Text Amendment No. 2023-02 a request by the City of Visalia to amend the table found in Visalia Municipal Code Chapter 17.25 (Commercial, Mixed Use, Office, and Industrial Zones Use Matrix) by adding a section for Delivery only medical marijuana retail is hereby approved:

City of Visalia Municipal Code Title 17 - Zoning Ordinance

<b>Commercial, Mixed Use, Office, and Industrial Zones Use Matrix</b> P = Use is Permitted by Right      C = Use Requires Conditional Use Permit T = Use Requires Temporary Use Permit      Blank = Use is Not Allowed											
USE	Commercial and Mixed Use Zones					Office Zones			Industrial Zones		Special Use Standards (See identified Chapter or Section)
	C-N	C-R	C-S	C-MU	D-MU	O-PA	O-C	BRP	I-L	I	
M39			P						P	P	
M40									C	P	
M41										P	
M42								P	P	P	
M43										C	17.04
M44									C	P	
	<u>Trucking, Warehousing, and Internet Fulfillment Centers</u>										
M45			P						P	P	
M46	<u>- Delivery only medical marijuana retail</u>										<u>17.32.167</u> <u>5.66</u> <u>8.64</u>
M47 6			P						P	P	
M48 7			P						P		

City of Visalia Municipal Code Title 17 - Zoning Ordinance

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USE	Commercial and Mixed Use Zones					Office Zones			Industrial Zones		Special Use Standards (See identified Chapter or Section)
	C-N	C-R	C-S	C-MU	D-MU	O-PA	O-C	BRP	I-L	I	
M49 8 - moving companies/trucking/storage			P						P	P	
M50 49 - refrigerated warehouses/storage			P						P	P	
M51 0 - school bus yards			P						P		
M52 1 - trucking & freight forwarding terminal			C						P	P	
M53 2 Massage Therapist	C	P		C	C	C	C				
MEDICAL FACILITIES/SERVICES (for medical/dental offices see OFFICES)											
M54 3 Hospitals, Acute Care (general medical/surgical)					C	C					
M55 4 Ambulance Services/Medical Transport			C	C	C	C		C			
M56 5 Convalescent Hospitals / Senior Care Facilities / Nursing Homes				C	C	C					
M57 6 Clinics (medical group, urgent care/walk-ins, <u>dental rehabilitation</u> )	C	C		C	C	C			C	C	
M58 7 Dialysis Centers and Blood Donation Centers		C	C	P	C	C			C		

City of Visalia Municipal Code Title 17 - Zoning Ordinance

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USE	Commercial and Mixed Use Zones					Office Zones			Industrial Zones		Special Use Standards (See identified Chapter or Section)	
	C-N	C-R	C-S	C-MU	D-MU	O-PA	O-C	BRP	I-L	I		
M59 8	Hospices											
M60 59	Laboratories (medical testing & diagnostic)								P	C		
M60 1	Medical Equipment/supplies (oxygen, prosthetics, walkers, etc.)						P	P	P	P		
M62 1	Opticians - Dispensing					C			P	P		
M63 2	Psychiatric Hospitals, including Treatment of Substance Abuse									C		
M64 3	Residential Alcohol/Substance Abuse Treatment Facility									C		
M65 4	Rehabilitation Hospitals								C	C		
M66 5	Museums (special interest/historical-public/private)						C			C		

**Section 5. Regulations for Delivery Only Medical Marijuana Retail.** Section 17.32.167, an ordinance to set forth regulations for delivery only medical marijuana retail businesses is hereby added to the Visalia Municipal Code. This municipal code section is included below and is in italics to note that it is a new code section:

**17.32.167 Delivery only medical marijuana retail.**

- A. *Purpose and Intent. It is the purpose of this section to allow, in certain cases and subject to specific zoning restrictions and development and operational standards, the operation of delivery only medical marijuana retail facilities and to regulate such operations for the protection of the general health, safety and welfare of the citizens of the city.*
- B. *Zoning Restrictions:*
  1. *Use is permitted in the Light Industrial (I-L) Zone and Industrial (I) Zone.*
  2. *Marijuana cultivation is not permitted.*
  3. *Delivery only medical marijuana retail businesses shall not be located:*

*Within five hundred (500) feet of any existing or planned public, private, or parochial schools, elementary schools, middle schools, or high schools located either inside or outside of the city limits.*

*As used in this section, "existing" means existing at the time the permit application is submitted. "Planned" means property designated on the general plan of the city for such use, or other official planning documents of the city, or property owned or leased by the city for such use.*

**C. Parking requirements**

*One parking space for each employee during the shift of maximum employment, plus one parking space for each vehicle used in conjunction with the use is required.*

**D. Fencing and/or security gates**

*A fence that is a minimum height of seven feet, subject to the standards for fencing in industrial zones defined in Section 17.36.070, along with gates to secure the business and prevent public access shall be required.*

**E. Signage**

*All signage is subject to the requirements as defined in Section 17.48.*

**F. Other Delivery only medical marijuana retail standards**

*Delivery only medical marijuana retail establishments must also meet all requirements of Chapter 5.66 - Regulations and Requirements for Cannabis Businesses Permitted to Operate Under California State Law.*

**Section 6. CEQA.** The project is exempt under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption); and

**Section 7. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**Section 8. Construction.** The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**Section 9. Effective Date.** This Ordinance shall take effect thirty days after its adoption.

**Section 10. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.