

CANNABIS IMPLEMENTING REGULATION NO. _____

IMPLEMENTING REGULATIONS GOVERNING REQUEST FOR
PROPOSALS PROCESS FOR ALLOCATING LIMITED PRIVILEGE
TO APPLY FOR A CANNABIS BUSINESS PERMIT

WHEREAS, on November 7, 2017, the City Council for the City of Alameda introduced on first reading Ordinance No. 3201 amending the Alameda Municipal Code (AMC) to add a new Article XVI (Cannabis Businesses) to Chapter VI (BUSINESSES, OCCUPATIONS, AND INDUSTRIES), that went into effect on January 18, 2018. This new article covers all aspects of regulating the operations of cannabis businesses, including requiring an operator's permit and granting the Community Development Department the authority to adopt implementing regulations ("regulatory ordinance"); and

WHEREAS, on December 5, 2017, the City Council introduced a separate ordinance, Ordinance No. 3206, on first reading governing land use by cannabis businesses, that amended the AMC by repealing section 30-5.15 (Medical Marijuana Dispensaries and Cultivation) in its entirety and adding a new section 30-10 (Cannabis) to conditionally permit specific types of cannabis businesses in certain zoning districts ("zoning ordinance"); and

WHEREAS, on November 7, 2017, because the City Council capped the maximum number of permits to be issued by business category, staff recommended, and the Council agreed, that a Request for Proposals (RFP) process should be utilized to select the businesses in each category who would be eligible to move forward with operator permit and land use permit applications.

NOW, THEREFORE: pursuant Section 6-59.16 of the regulatory ordinance, the Community Development Department adopts the following implementing regulations that shall govern the process for allocating the limited privilege to apply for cannabis business permits. The implementing regulations are as follows:

SECTION 1. Request for Proposals Implementing Regulations.

A. **Purpose.** The purpose of these regulations is to establish the process by which the City of Alameda will issue conditional award letters conferring the limited privilege of applying for the requisite approvals for an individual or entity to operate a Cannabis Business within the City of Alameda, including without limitation, a Use Permit, Business License, and Cannabis Business Operator's Permit (CBOP) pursuant to a RFP. The City of Alameda shall issue a single master RFP intended to identify potential cannabis businesses qualified to apply to obtain the requisite approvals.

B. **Issuance of RFP.** Based on direction from Council, the City Manager (or her designee) may issue a RFP inviting potential cannabis businesses to submit their

qualifications for the requisite approvals upon prior authorization from the City of Alameda in the form of a conditional award letter.

C. **Form of RFP.** These regulations and the RFP shall govern the process by which potential cannabis businesses shall provide information to assess their qualifications to apply for local approvals to operate a Cannabis Business in the City of Alameda.

D. **Letter of Intent.** All Proposers to the RFP must submit a Letter of Intent (LOI) by the specified date and time in the RFP. Failure to do so will lead to disqualification from further participation in the RFP process.

- i. The Community Development Department will review the LOIs to determine if a Proposer meets the following Minimum Requirements:
 - a) Timely submission of the LOI, as set forth in the RFP.
 - b) Timely payment of a Pre-Application Review Deposit of \$1,000.00.
 - c) Evidence that a location has been secured for the proposed Cannabis Business for a minimum of two years as set forth in the RFP, including without limitation any of the following:
 - 1. **Real Estate Letter of Intent:** A signed written term sheet, letter of intent, or exclusive negotiating agreement between two or more parties to sell, lease, or sublease property. This document will provide an outline of the terms of the proposed agreement. These terms can be further negotiated but must provide the basis for the proposed written agreement.
 - 2. **Real Estate Purchase or Lease Option:** This is a signed written agreement for the purchase or lease of a specific piece of real property. With this document, the proposed buyer or lessee gains the exclusive right to purchase or lease the property. Once a potential buyer or lessee has an option to buy or lease a property, the owner cannot sell or lease the property to anyone else during the term of the option. The potential buyer or lessee pays for this option for a specific time period.
 - 3. **Purchase Agreement:** This is a signed written agreement that a potential buyer will purchase a specific piece of property and the owner cannot sell to anyone else unless the terms of the agreement are not fulfilled.

4. **Lease Agreement:** This is a signed written agreement that gives a lessee certain rights to use and occupy specific real property for a specified period of time.
 5. **Proof of Ownership:** This is a deed that shows that title to the real property belongs to the applicant/proposer.
- d) Evidence that the proposed location is outside of the applicable cannabis buffer zones for sensitive uses consistent with local law.
- ii. All Proposers will be notified whether their LOI meets the Minimum Requirements. Proposers with qualifying LOIs will be invited to submit a proposal in response to the RFP. A determination that a LOI fails to meet the Minimum Requirements is a final determination.
 - iii. If the Community Development Department receives fewer LOIs than the cap in any given permit category, all individuals or entities identified in the LOI will be considered qualified, terminating the RFP process, and entitling those identified in the subsequently issued conditional award letter to apply for the requisite approvals.

E. **Rating and Ranking of Proposers to RFP.** Proposals shall be rated and ranked according to the Evaluation Rubric attached hereto (**Exhibit A**) and set forth in the master RFP approved by the City Council.

- i. **Proposal Submission.** Proposals must be submitted according to the terms of the published RFP issued by the City Manager (or his or her designee).
- ii. **Selection Criteria.** The Selection Panel shall assign points as provided in the evaluation criteria to each proposal and rank the cannabis businesses as set forth in the RFP based on their written materials submitted in response to the RFP using the following criteria, which is set forth more fully in the Evaluation Rubric (**Exhibit A**):
 - a) **Statement of Qualifications.** Proposers must describe the Cannabis Business Owners' qualifications relative to the proposal, including experience, abilities, knowledge, and overall qualifications for running businesses similar to the one proposed (cannabis and/or non-cannabis businesses).
 - b) **Proposal Implementation.** Proposers must provide verifiable, detailed descriptions of the persons and type of resources, including financial resources, for *key individuals and owners of 20% or more* of the business committed to implement the proposal.

- c) Understanding and Approach. Proposers must provide a statement demonstrating the business' understanding and approach to running the proposed cannabis business and how that approach will integrate the business into the community.
- d) Local Hire (Optional). Proposers may provide a plan demonstrating how they would hire locally. A local hire plan could address:
 - 1. A minimum percentage of the business' employment base hired locally.
 - 2. A recruitment plan for new hires, including outreach methods.
 - 3. The hourly wage of the lowest-paid employee.
 - 4. Estimated number of local employees in the first through fifth years.
 - 5. Available job pathways.
 - 6. Plans to train or educate employees (e.g., on-the-job training, or full/partial tuition payment) and promote lower-level employees.
- e) Local Ownership (Optional). Proposers may furnish materials to demonstrate they are locally owned. As set forth in the Evaluation Rubric (**Exhibit A**), points will be awarded based on: (a) whether more than 50% of the cannabis business is owned either by an Alameda resident or business owner, and (b) the length of such residency or business ownership. Accordingly, proposers must provide verifiable information regarding the number of years of residency or ownership by the local owners constituting the majority. The maximum points will be assigned for 100% local ownership.
- f) Community Benefit (Optional). Proposers may provide a plan demonstrating their prior involvement in community/nonprofit organizations in the City of Alameda, Alameda County, and/or their local community.
- g) Schedule. Proposers must provide a schedule to ensure the commencement of operations for the proposed Cannabis Business. The schedule should include dates for the following:
 - 1. Design review approval, if applicable.

2. Signage approval, if applicable.
 3. State license(s) issuance.
 4. CBOP/Land Use permit issuance.
 5. Building permit issuance.
 6. Issue of other regulatory permits (e.g., EBMUD discharge permit, etc.).
 7. Completion of construction.
 8. Opening and commencement of operations.
- iii. The score cut-off to be used by the Selection Panel when reviewing the proposals to determine which Proposers are granted an oral interview is 60 points (or a score of at least 75%).

F. **Selection Panel.** Proposers who have timely submitted complete written proposals and paid the Pre-Application Review Deposit of \$6,500.00 shall have their proposals rated and ranked by the Selection Panel. The Selection Panel shall employ “blind scoring,” whereby the identities of the owners of the proposed cannabis business will not be revealed, when the written proposals are scored.

- i. The Selection Panel shall consist of: (1) a Technical Support Panelist (non-scoring), (2) a Real Estate/Property Management Panelist, (3) a Finance Panelist, (4) a Health Panelist, (5) a Planning Panelist, and (6) a Panelist from another City department not related to cannabis.
- ii. All Panelists shall sign an acknowledgement to ensure full, fair and effective execution of their duties on the Selection Panel, including, to ensure each Panelist:
 - a) Maintains the confidentiality of any information gained during their service on the Selection Panel;
 - b) Takes all reasonable steps to ensure their service on the Selection Panel is fair and impartial, including without limitation, their disclosure prior to service on the Panel of any connection to a proposer or owner that would pose a substantial conflict of interest consistent with applicable law; and

- c) Reviews each proposal based on the information or materials provided during the RFP process, and shall refrain from conducting outside research.
- iii. The Community Development Director shall have the authority to appoint alternates in the event any panelist cannot serve on the Selection Panel.
- iv. The Selection Panel, in its sole discretion, may make a determination of qualification based on all information submitted as part of the RFP process, including all materials submitted in writing or orally.
- v. Proposers who meet the score cut-off will be invited to an oral interview before the Selection Panel. The Selection Panel will score proposers invited for an interview in which the same questions are asked of all of the proposers. Following the oral interview, Proposers may either receive a conditional award letter or be placed on the RFP wait list depending on their rating and ranking. In the event of a tying score, the final slot shall be chosen by a computer-generated random means approved by the Community Development Director.

G. **Awarding Letter.** Proposers determined to be qualified by the Selection Panel according to the score cutoff shall be issued a letter conditionally awarding to the potential applicant named therein the privilege to apply for the limited number of Cannabis Business permits. Awarding letters are non-transferrable.

- i. Once an award letter is issued, the awardee has sixty (60) days from the date of the awarding letter to apply for a Cannabis Business Permit. Failure to do so may lead to disqualification from further consideration and immediate revocation of the award letter.
- ii. The awarding letter shall also set forth any conditions on the determination that the Proposer was qualified to apply. Failure to meet any conditions of the award letter, may lead to disqualification from further consideration and immediate revocation of the award letter.
- iii. If an award letter is revoked, the City Manager (or his or her designee), in his/her sole discretion, may issue a new award letter to the next highest ranked Proposer on the RFP wait list.
- iv. The awardee must secure all the requisite approvals to begin commencement of operations, including without limitation, obtaining a use permit, business license, and operator's permit, within their proposed schedule, or one (1) year from the date of the award letter, whichever is sooner. The City Manager (or his or her designee) may

extend this one-year time deadline for “good cause,” as that term is defined in the regulatory ordinance.

H. **RFP Wait List.** The Community Development Department shall maintain a list for one (1) year, containing all Proposers that were not ultimately issued an awarding letter but received a score qualifying them to be wait-listed. The following is a non-exhaustive list of the instances in which a Proposer may move off the wait list:

- i. A Proposer has requested in writing to be removed from further consideration.
- ii. An award letter has been revoked for failure to meet the conditions stated therein.

I. **Appeal Procedure.** The RFP shall establish the appeal procedure for a Proposer to contest the decision to issue an awarding letter to a Proposer. There shall be no right to appeal a failure to meet the Minimum Requirements. Any such determination is a final decision by the City of Alameda.

SECTION 2. CEQA. Adoption of these regulations is not a project and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, sections 15378 and 15061(b)(3) (General Rule).

SECTION 3. Severability. If any provision of these regulations are held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of these regulations that can be given effect without the invalid provision and therefore the provisions of these regulations are severable. The Community Development Department declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence of these regulations.

SECTION 4. Effective Date. These regulations shall become effective upon its adoption, _____.

Community Development Department Director