

On November 13, 2018, the City Council adopted Ordinance 1527 (later renumbered as Ordinance 1523) which added Chapter 5.33 (Cannabis Retailer Regulatory Permits) to the Banning Municipal Code to establish a regulatory permit process for cannabis retailers (dispensaries). On December 11, 2018, the City Council introduced Ordinance 1538 which will amend Chapter 5.33. Ordinance 1538 is scheduled for second reading on January 8, 2019. Chapter 5.33, as amended by Ordinance 1538, reads as follows:

Chapter 5.33 Cannabis Retailer Regulatory Permits

Sections:

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5.33.010 Definitions

For the purpose of this Chapter, the following words and phrases shall be defined as follows:

A. "Applicant" means the business entity that is the owner and operator of the cannabis business that is applying for a cannabis regulatory permit pursuant to this Chapter.

B. "Bureau" means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

C. "Cannabis" means 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from

cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

D. “Cannabis business” means a cannabis retailer.

E. “Cannabis products” has the same meaning as in Section 11018.1 of the Health and Safety Code.

F. “Cannabis Retailer” means a cannabis business that engages in the retail sale and delivery of cannabis or cannabis products to customers.

G. “City” means the City of Banning.

H. “City Manager” means the City Manager or his/her designee.

I. “Convicted” or “conviction” means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted.

J. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a state license issued by a licensing authority.

K. “Eligible property” or “Eligible properties” means any property located within the Highway Serving Commercial zone that meets the location requirements set forth in Chapter 17.54.

L. “Financial interest” shall have the meaning set forth in Section 5004 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

M. “Licensing authority” means the Bureau of Cannabis Control; CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture (CDFA); the California Department of Public Health’s Manufactured Cannabis Safety Branch; or any other state cannabis licensing authority.

N. “Owner” means any of the following:

1. A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.

2. The chief executive officer of a nonprofit or other entity.

3. A member of the board of directors of a nonprofit.

4. An individual who will be participating in the direction, control, or management of the person applying for a permit. An owner who is an individual participating in the direction, control, or management of the commercial or retail cannabis business includes any of the following:

a) A partner of a cannabis business that is organized as a partnership.

b) A member of a limited liability company of a cannabis business that is organized as a limited liability company.

c) An officer or director of a cannabis business that is organized as a corporation.

O. "Permit" means a Cannabis Retailer Regulatory Permit issued under this Chapter.

P. "Permittee" means any person holding a Permit under this Chapter.

Q. "Person" includes any individual, firm, partnership, joint venture, association, corporation, Limited Liability Company, estate, trust, business trust, receiver, syndicate, non-profit, or any other group or combination acting as a unit, and the plural as well as the singular.

R. "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or permittee where the commercial or retail cannabis activity will be or is conducted.

S. "Significant discrepancy" means a difference in actual inventory compared to records pertaining to inventory of at least one thousand dollars (\$1,000). For purposes of determining a discrepancy, the acquisition price of the cannabis goods shall be used to determine the value of cannabis goods in a permittee's inventory.

5.33.020 Cannabis Regulatory Permit Required.

A. No person shall establish, or operate a cannabis business within the City unless the person has:

1. A valid business license;

2. A valid permit issued by the City pursuant to this Chapter;

3. A valid conditional use permit issued pursuant to Chapter 17.54; and

4. A valid license issued by the Bureau to conduct the specific commercial cannabis activity that is being conducted on the premises.

B. Each cannabis business shall obtain a separate permit. Permits are nontransferable and will only be issued to the entity that will own and operate the cannabis business.

C. Any permit that is issued shall not go into effect unless a conditional use permit is also issued by the City Council pursuant to Chapter 17.54 of the Banning Municipal Code.

D. A permit is issued pursuant to this Chapter is valid for a term of one (1) year from the date of issuance. Renewal terms shall not exceed one (1) year.

5.33.030 Cannabis Retailer Regulatory Permits.

A. An owner of a cannabis business may apply for a permit, on behalf of a cannabis business, by filing an application with the City Manager.

B. A cannabis business may only submit one application. If a cannabis business has multiple owners, only one owner may submit an application on behalf of the cannabis business. Multiple cannabis businesses may submit an application to operate at the same eligible property in the City. However, consistent with Section 17.54.030(B), a cannabis business shall not be permitted to operate at multiple locations in the City, nor shall a cannabis business be issued a permit if any owner or person with a financial interest in the cannabis business is also an owner or has a financial interest in any other cannabis business that is operating in the City or that has obtained a permit to operate in the City.

C. No person shall knowingly make a false statement of fact or knowingly omit any information that is required in the permit application.

D. Applications shall not be accepted or processed unless the applicant pays the nonrefundable application fee in the amount to be established by resolution of the City Council.

E. Applications will be accepted by appointment only and the applicant must adhere to the application procedures adopted by resolution of the City Council.

F. The application shall be on a form approved by the City Manager and shall include, but not be limited to, the following:

1. The type of cannabis business the applicant seeks to operate in the City, a description of the commercial cannabis activity that will be conducted on the premises, and a general description of the products that will be sold on or from the premises.

2. A description of the statutory entity or business form that will serve as the legal structure for the cannabis business; a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement; and the name and address of its agent for purposes of service of process.

3. A list of every fictitious business name the cannabis business is operating under.

4. The legal name of the applicant.

5. The current name and primary and secondary telephone numbers and email addresses of at least one twenty-four (24) hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the cannabis business.

6. If applicable, the business trade name (“DBA”) of the cannabis business.

7. A list of the license types and the license numbers issued by any licensing authority to the applicant, or any other owner of the cannabis business, including the date the license was issued, the date the license will terminate and the licensing authority that issued the license.

8. Whether the applicant, or any owners of the cannabis business, have been denied a license or have had a license suspended or revoked by any licensing authority. The applicant shall identify the type of license applied for, the name of the licensing authority that denied the application, and the date of denial.

9. The assessor’s parcel number and the physical address of the premises where the cannabis business will be conducted, the telephone number for the premises, and the website address and email address of the cannabis business. If the cannabis business will be conducted on a lot that is vacant at the time that the application is submitted, then the applicant shall amend the application at such time that a physical address and telephone number is issued for the cannabis business.

10. The cannabis business’ federal employer identification number.

11. The physical address of any other premises owned or operated by the applicant, or any other owner of the cannabis business, and a brief summary of the business operations at each premises.

12. A complete list of every owner of, or person with a financial interest in, the cannabis business. Each individual named on this list shall submit the following information:

a) Their full name.

- b) Their title within the applicant entity, if applicable.
- c) Their date of birth and place of birth.
- d) Their social security number or individual taxpayer identification number.
- e) Their mailing address.
- f) Their home, business, or mobile telephone number and email address.
- g) Their current employer.
- h) Their percentage of ownership interest held in the applicant entity, or other financial interest held in the applicant entity.
- i) Whether the individual has an ownership or a financial interest in any other cannabis business licensed by a licensing authority.
- j) A copy of the individual's government-issued identification that includes the name, date of birth, physical description and picture of the owner or person with a financial interest in the cannabis business.
- k) A copy of the DOJ and NCIC fingerprint background check for each owner and person with a financial interest in the cannabis business procured through the Banning Police Department.
- l) If applicable, a copy of any certificate of rehabilitation issued under Penal Code section 4852.01 or dismissal issued pursuant to Penal Code section 1203.4 or 1203.41.
- m) If applicable, a detailed description of any suspension or revocation of a cannabis related license or sanctions for unlicensed or unlawful cannabis activity by a state or local governmental agency against the applicant, or any of its owners or persons with a financial interest in the cannabis business, or any business entity in which the applicant or any of its owners or person with a financial interest in the cannabis business was an owner or officer within the five (5) years immediately preceding the date of the application.
- n) If applicable, a detailed description of any civil and/or criminal suit and/or judgment relating to unlawful cannabis activity against the applicant or any of its owners or person with a financial interest in the cannabis business, or a business entity in which the applicant or any of its owners or persons with a financial interest in the cannabis business was an owner or officer within the five (5) years immediately preceding the date of the application.

13. A copy of the applicant's application with the Bureau to operate a cannabis retailer in the City.

14. A list of all owners, managers, and employees that are authorized to carry concealed weapons.

15. A written, notarized statement from the owner of the property where the cannabis business will operate evidencing unqualified consent to the applicant operating a cannabis business on the property. The statement must specify the street address (unless the property is a vacant lot) and assessor's parcel number for the

premises. The statement shall also contain the name, business address, email address and telephone number of the property owner(s) (whether business entity or individual). If applicable, a copy of the rental agreement shall also be provided.

16. If the applicant is the landowner upon which the premises is located, a copy of the title or deed to the property.

17. Evidence that the cannabis business will be compliant with the location restrictions set forth in Business and Professions Code section 26054(b) and the zoning restrictions set forth in Title 17 of the Banning Municipal Code.

18. A premises diagram which meets the requirements set forth in Section 5006 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

19. The proposed hours of operation.

20. Authorization and consent for City staff and the Police Department to seek verification of the information contained within the application.

21. An agreement whereby the applicant and the cannabis business:

a) Release the City of Banning, its agents, officers, elected officials, employees and attorneys, from any and all claims, injuries, damages or liabilities of any kind arising from any repeal or amendment of this Chapter or any other provision of the Banning Municipal Code, and any arrest or prosecution of the owners, managers, agents, employees, members or volunteers of the cannabis business for violation of state or federal laws; and

b) Defend, indemnify and hold harmless the City of Banning, and its agents, officers, elected officials, employees, and attorneys from and against any and all claims or actions brought by adjacent or nearby property owners or any other parties for any damages, injuries or other liability of any kind arising from the operation of the cannabis business.

22. Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact, whether intentional or not, is cause for rejection of this application, denial of the permit, or revocation of a permit issued.

G. Nothing in this section is intended to limit the City Manager's ability to request additional information the City Manager deems necessary or relevant to determining a cannabis business' suitability for a permit. An applicant shall provide any additional information requested by the City Manager no later than seven (7) days after the request, unless otherwise specified by the City Manager.

5.33.040 Lottery.

A. City staff shall establish and conduct a lottery for determining which cannabis businesses will (1) be issued a cannabis regulatory permit, and (2) be eligible to apply for a cannabis conditional use permit pursuant to the provisions of Chapter 17.54.

B. The City Council shall adopt a resolution setting forth the procedures that will be followed in conducting the lottery, and the steps to be included in a schedule that will be prepared for the receipt and review of applications of cannabis retail regulatory permits. The City Manager is hereby authorized to make any necessary changes to the lottery procedures and steps to be included in the schedule as he or she deems appropriate.

5.33.050 Decision on Cannabis Regulatory Permit.

A. The City Manager, in consultation with the Chief of Police, shall evaluate all completed applications that are submitted by the application deadline and determine whether the applicant can participate in the lottery. The applicant shall be ineligible to participate in the lottery, if the City Manager determines that one or more of the following conditions exist:

1. The applicant has not paid all fees required for consideration of the application.

2. The application is incomplete, filed late, or is otherwise not responsive to the requirements of this Chapter.

3. The application contains a false or misleading statement or omission of a material fact.

4. The applicant, or any owner or person with a financial interest in the cannabis business, is not at least twenty-one (21) years old.

5. The applicant, or any owner or person with a financial interest in the cannabis business, has unpaid and overdue administrative penalties imposed for violations of the Banning Municipal Code.

6. The applicant, or any owner or person with a financial interest in the cannabis business, has an unpaid civil judgment imposed for violation(s) of the Banning Municipal Code.

7. The applicant, or any owner or person with a financial interest in the cannabis business is delinquent on any fee, charge for service or tax levied by the State of California or the City.

8. The applicant, or any owner or person with a financial interest in the cannabis business, has, within the five (5) years preceding the date the application is filed with the Community Development Director, been (1) convicted of engaging in unlawful commercial cannabis activity, (2) issued an uncontested administrative citation by a city, county, or city and county for engaging in unlawful cannabis-related activity, or (3) been

the subject of a lawsuit for engaging in unlawful cannabis-related activity in which the applicant or owner was not the prevailing party.

9. The applicant, or any owner or person with a financial interest in the cannabis business, has been denied a license or permit or other authorization to engage in commercial cannabis activity by a state or local licensing or permitting authority, for any reason other than the fact that the applicant was not selected for a limited number of licenses or permits, but would have otherwise qualified to obtain the license or permit.

10. The applicant, or any owner or person with a financial interest in the cannabis business is employed by the City's police department or the City's Community Development Department.

11. The applicant, or any of owner or persons with a financial interest in the cannabis business, has been convicted of any crime set forth in Business and Professions Code section 26057(b)(4), Fish and Game Code sections 12025 or 12025.1, Penal Code section 186.22 or any other offense which is substantially related to the qualifications, functions, or duties of the cannabis business for which the application is made. In determining whether such offense is "substantially related," the City Manager shall consult with the City Attorney and thereafter apply the analysis set forth in section 5017 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

12. The premises or the operation of the applicant's cannabis business, as described in its application, would fail to comply with any provision of the Banning Municipal Code, or any state law or regulation.

13. Operation of the cannabis business in the manner proposed poses a threat to the public health, safety or welfare, or violates any provision of this Chapter.

B. If none of the above-referenced conditions exist, the City Manager, or his or her designee, shall notify the applicant that the cannabis business is eligible to participate in the lottery. If any of the above-referenced conditions exist, the City Manager shall notify the applicant that the cannabis business has been denied the opportunity to participate in the lottery and has been denied a cannabis regulatory permit. Any notice of denial shall set forth the reasons of denial and advise the applicant of the right to contest the denial pursuant to the procedures set forth in Section 5.33.060.

C. Within seven (7) business days of the lottery being conducted, the City Manager, or his or her designee, shall issue a cannabis regulatory permit to the first three (3) retailers that were selected in the lottery and shall notify the applicants that they are eligible to apply for a cannabis conditional use permit. The applicants that were not the first three (3) retailers selected in the lottery will be placed on a waiting list in the order that they were selected in the lottery. These applicants will not be issued or denied a permit, but rather will remain on the waiting list in the event that an additional spot opens up to obtain a cannabis regulatory permit.

D. If a cannabis regulatory permit is issued to an applicant, but a cannabis retailer conditional use permit pursuant to Chapter 17.54 is not approved within one year from the issuance of a permit under this Chapter, the permit issued under this Chapter shall be void.

5.33.060 Lottery Appeals.

A. If an applicant is denied the opportunity to participate in the lottery due to the applicant's failure to submit a complete application by the required deadline, failure to satisfy the criteria for issuance of a permit, or for any other reason, the applicant may appeal this decision in writing. The written appeal shall be filed with the Community Development Department, by the deadline set forth in a resolution adopted by the City Council, and shall be accompanied by an appeal fee. After the deadline to appeal has passed, the decision to deny the cannabis regulatory permit shall be deemed final, and may no longer be appealed.

B. In the event an appeal is timely filed, the lottery shall not be conducted until the appeal is heard. Upon receipt of a timely appeal, the Community Development Director shall make arrangements for the selection of a hearing officer to conduct the appeal hearing. Not less than seven (7) days prior to the appeal hearing, the Community Development Director shall notify the City Manager, Chief of Police, and the appellant of either: (1) the name of the administrative law judgment who will serve as the hearing officer, (2) the names of three qualified attorneys or retired Superior Court or Appellate Court judges submitted to the Community Development Department by a reputable firm providing mediators and arbitrators to serve as a panel from which the hearing officer will be selected, or (3) any other option determined by the City to serve as a fair and impartial process to hear the appeal. The City shall decide which of the three options specified above will be used for the appeal, and the Community Development Director shall notify the City Manager, Chief of Police, and appellant of the option that will be used. If the second option is selected by the City, then within three (3) days of the date of mailing the notice of the available panel, the City Manager, Chief of Police, or the appellant may notify the Community Development Director in writing that he or she elects to remove one of the three potential hearing officers. The Community Development Director shall then request the mediation and arbitration firm to select one of the remaining names on the list as the designated hearing officer for the appeal hearing. The hearing officer shall be fair and impartial and shall have no bias for or against the City Manager, Chief of Police, or the appellant.

C. At the appeal hearing, the hearing officer shall receive oral and written evidence from the City Manager and the appellant. The hearing officer shall have authority to administer oaths to those persons who will provide oral testimony. The evidence presented need not comply with the strict rules of evidence set forth in the California Evidence Code but shall be the type of evidence upon which reasonable and prudent people rely upon in the conduct of serious affairs. The hearing officer shall have broad authority to control the proceedings and to provide for cross examination of witness in a fair and impartial manner. The City Manager shall have the burden of proof to establish by clear and convincing evidence the facts upon which his or her decision is

based. The appeal hearing shall be recorded by audio recording. Any party may, at its sole cost and expense, utilize the services of a certified court reporter to prepare the verbatim record of the hearing. If a court reporter is used, the transcript prepared shall be made available for purchase to both parties. The hearing officer may continue the appeal hearing from time to time, but only upon written motion of a party showing good cause for the continuance.

D. The hearing officer may uphold or reverse the decision of the City Manager. Within seven (7) days of the conclusion of the appeal hearing, the hearing officer shall render his or her decision and make written findings supporting the decision. He or she shall send the decision to the Community Development Director. Upon receipt of the hearing officer's decision, the Community Development Director shall send a copy of it to the City Manager and the appellant, along with a proof of mailing. The hearing officer's decision shall be final.

5.33.070 City Manager Authority.

A. The City Manager is authorized to adopt policies, rules, and procedures to implement and interpret this Chapter, and is further authorized to waive any requirements set forth in this Chapter so long as the requirement being waived is applied equally to all applicants.

B. Upon approval of a permit or renewal of a permit, the City Manager may impose conditions in excess of the requirements set forth in this Chapter including, but not limited to, conditions relating to the operation of any cannabis business and restrictions relating to the deployment or use of the types of equipment used on the premises.

C. During the term of any permit, the City Manager may impose additional conditions on a permit when reasonably necessary to abate a violation of the Banning Municipal Code or to protect the public health, safety or welfare.

D. Review of any decision by the City Manager to impose additional conditions on a permit pursuant to this section shall be pursuant to Section 5.33.130.

5.33.080 Cannabis Regulatory Permit Renewal.

A. To renew a permit, a completed permit renewal form, payment of the permit renewal application fee, payment of the permit fee, and, if applicable, the late fee required by subsection D of this section shall be received by the City no earlier than sixty (60) calendar days before the expiration of the permit and no later than 5:00 p.m. on the last business day before the expiration of the permit. Failure to receive a notice for permit renewal does not relieve a permittee of the obligation to renew all permits as required.

B. An application for a permit renewal shall contain the following:

1. The name of the permittee. For a permittee who is a business entity, the permittee shall provide the legal business name of the applicant.

2. The permit number and expiration date.
3. The permittee's address of record and premises address.
4. An attestation that all information provided to the City in the original application for a permit is accurate and current.

C. In the event the permit is not renewed prior to the expiration date, the permittee shall not engage in commercial cannabis activity until the permit is renewed.

D. A permittee may submit a permit renewal application up to thirty (30) calendar days after the permit expires. In addition to the application fee for renewal of the permit, the permittee submitting a renewal application pursuant to this subsection shall pay a late fee in an amount established by resolution of the City Council. The payment of a late fee shall not be grounds for a defense against prosecution or enforcement of the Banning Municipal Code on the basis that the permittee operated a cannabis business without a valid or unexpired permit nor shall it be considered as a setoff to any assessment, fine, penalty or recoupment of costs of enforcement attributable to said violation.

E. The City Manager, in consultation with the Chief of Police, shall evaluate the renewal application and determine whether to renew the permit based on the criteria set forth in Section 5.33.050. In addition, the City Manager, in consultation with the Chief of Police, shall evaluate whether the premises is substantially different from the diagram submitted by the applicant, in that the size, layout, location of common entryways, doorways or passage ways, means of public entry or exit, or limited access areas within the premises is not the same. If the premises is substantially different, the City Manager may deny the renewal application. Review of any decision by the City Manager to deny a request to renew a permit shall be pursuant to Section 5.33.130.

5.33.090 Premises.

A. A permittee shall not, without the prior written approval of the City Manager, make a physical change, alteration, or modification of the premises that alters the premises or the use of the premises from the premises diagram filed with the permit application. Material or substantial changes, alterations or modifications requiring approval include, but are not limited to, the removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway or passage alters or changes limited-access areas within the premises.

B. A permittee whose premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the City Manager. The request shall be in writing and include:

1. A new premises diagram that conforms to the requirements set forth in Section 5006 of Title 16 of the California Code of Regulations.

2. A fee in an amount to be established by resolution of the City Council.
 3. Any additional documentation or information that the City Manager deems necessary to consider the request.
- C. A permittee shall not sublet the premises.

5.33.100 Notification of Criminal, Civil or Administrative Action.

A. A permittee shall ensure that the City Manager is notified in writing of the criminal conviction of a permittee, owner, or employee or when a permittee, owner, or employee has been charged with a criminal offense. Notice shall either be by mail or electronic mail and shall occur within forty-eight (48) hours of the conviction or charge. The written notification shall include the date of conviction or charge, the court docket number, the name of the court in which the permittee was convicted or charged, and the specific offense(s) for which the permittee was convicted or charged.

B. A permittee shall ensure that the City Manager is notified in writing of a civil penalty or judgment rendered against the permittee or any owner either by mail or electronic mail, within forty-eight (48) hours of delivery of the verdict or entry of judgment, whichever is earlier. The written notification shall include the date of verdict or entry of judgment, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered against the permittee.

C. A permittee shall ensure that the City Manager is notified in writing of the revocation or suspension of a license or other authorization for a cannabis business issued by a licensing authority within forty-eight (48) hours of receiving notice of the revocation. The written notification shall include the name of the licensing authority involved, a written explanation of the proceeding or enforcement action, and the specific violation(s) that led to revocation or suspension.

5.33.110 Notification of Theft, Loss, or Criminal Activity.

A. A permittee shall notify the City Manager and the Chief of Police within twenty-four (24) hours of discovery of any of the following situations:

1. The permittee discovers a significant discrepancy in its inventory.
2. The permittee becomes aware of, or has reason to suspect, diversion, theft, loss or any other criminal activity pertaining to the operations of the permittee by any owner, person with a financial interest in the cannabis business, employee, agent or volunteer of the cannabis business or by any third party.
3. The permittee becomes aware of, or has reason to suspect, any breach of security.

B. The notification required by this Section shall be in writing and include the date and time of discovery of the occurrence of the theft or loss, the date of the occurrence of the theft or loss and a description of the incident including, when applicable, the items that were taken or lost.

5.33.120 Suspending, Modifying, or Revoking Permits.

A. The City Manager may suspend, modify, further condition or revoke any permit pursuant to the provisions of this Chapter for any of the following reasons:

1. The permittee, or any of its owners, has violated a term or condition of its permit issued pursuant to this Chapter or a term or condition of a license issued by a licensing authority.

2. The permittee, or any of its owners, has violated the Banning Municipal Code or the laws or regulations of the state.

3. The permittee or any other person performed work as an employee or volunteer or acquired a financial interest in the applicant as an owner without first undergoing fingerprinting and a DOJ/NCIC background check.

4. The permittee failed to pay a fine or administrative penalty when due.

5. The permittee failed to take reasonable steps, as defined in Section 5808 of Title 16 of the California Code of Regulations, as the same may be amended from time to time, to correct nuisance conditions on the premises, including the immediately adjacent area that is owned, leased, or occupied by the permittee, within a reasonable time after receipt of notice to abate the condition.

6. The permittee knowingly engaged in the illegal sale, or negotiations for the sale, of controlled substances, as defined in Section 5805 of Title 16 of the California Code of Regulations, upon the premises. Successive sale, or negotiations for sale, over any continuous period of time shall be deemed evidence of permission.

B. A permittee whose permit has been suspended shall conspicuously display a notice on the exterior of the permittee's premises for the duration of the suspension, and ensure that the notice remains continuously in place for the time specified. The notice shall be in at least twenty-four (24) point type and provide as follows:

NOTICE OF SUSPENSION

THE CANNABIS RETAILER REGULATORY PERMIT ISSUED FOR THIS PREMISES HAS BEEN SUSPENDED FOR VIOLATION OF THE BANNING MUNICIPAL CODE

C. A permittee whose permit has been revoked shall conspicuously display a notice on the exterior of the premises indicating that the permit has been revoked. The

notice shall remain continuously on the premises for at least fifteen (15) calendar days. The notice shall be in at least twenty-four (24) point type and provide as follows:

NOTICE OF REVOCATION

THE CANNABIS RETAILER REGULATORY PERMIT ISSUED FOR THIS PREMISES HAS BEEN REVOKED FOR VIOLATION OF THE BANNING MUNICIPAL CODE

D. Action taken by the City Manager with respect to the suspension, modification, or revocation of a cannabis regulatory permit shall be final and conclusive. Any permit aggrieved by the suspension, modification or revocation of a cannabis regulatory permit may obtain review of such decision by appeal to the City Council pursuant to Section 5.33.130.

5.33.130 Initiation of Discipline and Appeals.

A. The City Manager may initiate suspension or revocation proceedings or impose additional conditions on a permittee by sending written notice to the permittee of the disciplinary action and grounds for the action by certified mail return receipt requested, to the permittee's business address, as set forth in the permit. The notice shall inform the permittee of its right to appeal the determination of the City Manager by sending written notice of appeal and the grounds for such appeal to the City Manager no later than ten (10) calendar days after the date in which the notice of suspension, revocation or intention to impose additional conditions was mailed. Failure to timely appeal shall result in a forfeiture of the right of appeal, and the determination of the City Manager shall be final.

B. If an application for a permit renewal was denied by the City Manager, or the City Manager revokes or suspends a cannabis regulatory permit, the applicant shall have ten (10) calendar days from the date the notice of the disposition was deposited in the mail within which to appeal the City Manager's decision to the City Council. If the tenth calendar day falls on a day the City is closed, the time shall be extended to the next business day.

C. The appeal shall be submitted in writing to the City Clerk. Upon receipt of a timely notice of appeal that is accompanied by the appropriate filing fee in an amount set by resolution of the City Council; the City Clerk shall set the matter for hearing. Unless continued for good cause demonstrated, appeals shall be heard by the City Council within sixty (60) calendar days of the date notice of appeal was received by the Clerk. If an appeal is timely and properly filed together with the filing fee, any suspension or revocation is stayed during the pendency of the appeal.

D. If the appeal is timely and properly filed together with the filing fee, the City Clerk shall mail notice of the date, time and place of a hearing before the City Council to the applicant at least ten (10) days prior to the hearing. The hearing shall be commenced at the earliest possible date authorized by law.

E. After considering all of the testimony and evidence submitted at said hearing, the City Council shall decide the appeal based upon a preponderance of the evidence and issue written findings of fact no later than ten (10) days after the hearing. Hearings before the City Council shall not be bound by formal rules of evidence. Hearsay evidence may be received; however, in no event shall a decision be based solely on hearsay evidence.

F. Within five (5) business days after the City Council acts on the appeal, the City Clerk shall send to the applicant, by certified mail, return receipt requested, written notice of the disposition of the appeal.

G. Any permittee aggrieved by the decision of the City Council may obtain review of the order within ninety (90) days of notice by filing with the Riverside County Superior Court a petition for review pursuant to California Code of Civil Procedure section 1094.5. For purposes of this subsection, notice shall be the date that the decision of the City Council is mailed by first-class mail, postage prepaid, with a certificate of mailing.

5.33.140 Non-Disciplinary Modification of Cannabis Regulatory Permit.

A. The City Manager may eliminate, modify or add to any condition imposed on a permittee. The elimination of a condition or conditions may only be approved by the City Manager when he or she deems the condition not be necessary to protect the health, safety or welfare of the public. The modification or addition of conditions may be approved by the City Manager when he or she deems such action reasonably necessary to protect the health, safety or welfare of the public or to otherwise secure compliance with the requirements set forth in the Banning Municipal Code. The action taken on the permit and the grounds for such action shall be made in writing and sent by certified mail return receipt requested to the permittee's business address, as set forth in the permit.

B. The action by the City Manager taken pursuant to this Section may be made in conjunction with disciplinary action, in lieu of disciplinary action, or independent of disciplinary action.

C. Any person aggrieved by the action of the City Manager may appeal the decision pursuant to the procedures set forth in Section 5.33.130.

5.33.150 Notification of Changes.

A. A permittee shall notify the City Manager in writing within ten (10) calendar days of any change to any item listed in the application. The notification shall be signed by an owner.

B. No person or entity may gain a financial interest in the permittee if said person or entity is determined by the City Manager to have a disqualifying conviction within the meaning of Business and Professions Code section 26057 or is otherwise barred by reason of this Chapter.

C. If one or more of the owners of a permittee change, a new permit application and fee shall be submitted to the City within ten (10) business days of the effective date of the ownership change. A change in ownership occurs when the person receiving its interest in the cannabis business meets the definition of an owner. A change in ownership does not occur when one or more owners leave the business by transferring their ownership interest to the other existing owner(s).

5.33.160 Remedies and Public Nuisance.

A. The procedures set forth in this Chapter shall be cumulative and in addition to any other procedure or legal remedy provided for in the Banning Municipal Code or the laws of the state. Nothing in this Chapter shall be deemed to prevent the City from commencing alternative administrative, civil or criminal proceedings. Any violation of this Chapter may be subject to injunctive relief, revocation of any permit issued by the City, disgorgement and payment to the City of any and all money unlawfully obtained, costs of abatement, investigation and attorney fees or any other relief or remedy available at law or equity.

B. The City Attorney is authorized to institute administrative action pursuant to Chapters 1.20 through 1.28 of the Banning Municipal Code and to institute civil or criminal action in the Riverside County Superior Court in order to enforce the provisions of this Chapter and those provisions set forth in Title 17 of the Banning Municipal Code relating to land use for cannabis businesses.

C. A violation of any Section within this Chapter is a public nuisance.

5.33.170 Joint and Several Liability.

All permittees and owners shall be jointly and severally liable for violation of any provision set forth in this Chapter.